

**United States Department of Labor
Employees' Compensation Appeals Board**

YVONNE E. MAY, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 04-689
Issued: August 16, 2004**

Appearances:
Linda DeCarlo, for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On January 20, 2004 appellant filed a timely appeal from the merit decisions of the Office of Workers' Compensation Programs dated May 1 and December 30, 2003, which denied modification of an earlier decision to terminate benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the issue of termination.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation.

FACTUAL HISTORY

On the prior appeal of this case,¹ the Board reversed the Office's December 29, 1995 decision terminating compensation for appellant's February 3, 1994 employment injury. The

¹ Docket No. 96-840 (issued March 3, 1997). The facts of this case, as set forth in the Board's prior decision, are hereby incorporated by reference.

Office accepted appellant's claim for a lumbar contusion and strain. The Office terminated her compensation benefits based on the opinion of Dr. Daniel Dorfman, a Board-certified physiatrist and Office referral physician, who reported that appellant could work with restrictions that were unrelated to her employment injury. The Board found that Dr. Dorfman's opinion conflicted with the opinion given by Dr. Robert A. Cain, a Board-certified family practitioner and appellant's treating physician, who reported that appellant could not perform her usual work due to residuals of the employment injury. Given this unresolved conflict in medical opinion, the Board found that the Office failed to meet its burden of proof to terminate compensation.

The Office referred appellant to an impartial medical specialist, Dr. Nabil F. Angley, a Board-certified orthopedic surgeon. On May 15, 1997 Dr. Angley diagnosed status post sprain and contusion to the lumbar spine and reported no objective findings to support appellant's ongoing complaints of pain. He opined that appellant could return to work with no restrictions.

In a decision dated July 10, 1997, the Office terminated appellant's compensation effective that date, finding that the weight of the medical evidence established that her work-related injury had ceased.

In a decision dated December 31, 1997, an Office hearing representative found that Dr. Angley had occasionally served as a district medical adviser for the Office, which undermined the appearance of impartiality. As the Office could not use Dr. Angley's opinion to resolve the conflict between Dr. Dorfman and Dr. Cain, the hearing representative set aside the Office's July 10, 1997 decision and remanded the case for another impartial referral.

The Office referred appellant to Dr. Umakant T. Purohit, a Board-certified orthopedic surgeon. In a report dated February 16, 1998, Dr. Purohit related appellant's symptoms, history and findings on physical examination:

"She is very apprehensive and has difficulty following instructions. She stands pretty rigid and when I suggest to bend forward she complains of back pain. Exam[ination] of the back reveals no spasm. The whole back is very supple and all muscles are very soft. She restricts herself voluntarily to forward flexion and even on lateral flexion she complains of severe pain but I cannot find any spasm of any paravertebral muscles on either side. She has some tenderness of the [posterior sacroiliac spine] joint on the right side but no sciatic notch tenderness. Even with slight touch she complains of severe pain in the posterior part of the back. Sitting down, straight leg raising was 90-90. Ankle and knee jerks are brisk. She has no weakness of any muscle groups in the feet, ankles or knees. She lays down flat and she really fights straight leg raising and she does not let me go beyond 30 to 40 degrees. Flexing the hips and knees causes severe pain in the back which I doubt gives her so much pain. She has normal sensation. Muscle groups in the posterior aspect of the buttocks and hamstrings are power 4 to 5. There are no sensory changes."

Dr. Purohit diagnosed status post strain and contusion of the lumbar spine. He noted that appellant fell in the snow on February 3, 1994 and sustained a soft-tissue injury to her lower lumbar region. He stated that she "should improve and she should be at a status quo level."

Dr. Purohit reported that appellant had a very mild lumbosacral strain, but he was not convinced of how much it was functional, as it was very difficult to correlate her symptoms with physical findings. He explained that appellant had more exaggerated signs and symptoms compared to what he found on clinical examination. Dr. Purohit reported that appellant definitely needed a pain management program. He concluded that she could work with restrictions for eight hours or “increasing her hours as time goes on.”

The Office requested clarification. In a supplemental report dated March 17, 1998, Dr. Purohit stated that he “could not find anything definitely positive objectively but most of the symptoms are subjective.” He reiterated that he could not find anything positive and that appellant had a lot of apprehension. Dr. Purohit stated that her symptoms were more exaggerated than one could find objectively.

By decision dated June 10, 1998, the Office terminated appellant’s compensation effective that date. The Office noted that Dr. Angley was not associated with the district Office at the time of the July 10, 1997 evaluation but was associated with the Office sometime later. The Office noted that Dr. Cain was a Board-certified family practitioner and therefore was not as qualified as Dr. Dorfman to offer an opinion on a musculoskeletal injury. The Office concluded that the opinions of Drs. Dorfman, Angley and Purohit established that appellant fully recovered from her February 3, 1994 employment injury and required no restrictions due to that injury.

In a decision dated February 8, 2001, an Office hearing representative affirmed the termination of appellant’s compensation. In a decision dated April 22, 2002, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. In decisions dated May 1 and December 30, 2003, the Office again denied modification of its decision to terminate compensation.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.² The Office’s burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.³

When there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁴

² *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

³ *Larry Warner*, 43 ECAB 1027, 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁴ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roanhaus*, 42 ECAB 288 (1990).

ANALYSIS

The Office accepted appellant's claim for a lumbar contusion and strain and therefore has the burden of proof to justify the termination of appellant's compensation. After the hearing representative ruled that the Office could not use Dr. Angley's opinion to resolve the conflict between Dr. Dorfman and Dr. Cain, the Office referred appellant to Dr. Purohit, who concluded that appellant could return to work with restrictions. The Board finds that the opinion of Dr. Purohit, the impartial medical specialist, is not well rationalized. He acknowledged that appellant sustained a soft tissue injury to her lower lumbar region when she fell on February 3, 1994, but he stopped short of concluding that she had returned to her preinjury status. He stated only that appellant "should improve" and that she "should be" at a status quo level. Dr. Purohit reported that appellant had a very mild lumbosacral strain, but he was not convinced how much of it was functional. This uncertainty diminishes the probative value of his opinion.⁵ There is also an apparent contradiction in Dr. Purohit's inability to report anything positive on objective examination and his statement that "most" of appellant's symptoms were subjective. Finally, Dr. Purohit reported that appellant definitely needed a pain management program and concluded that she could return to work with restrictions, but he did not make clear whether these recommendations bore any relation to the injury that occurred on February 3, 1994.

The Office referred appellant to Dr. Purohit for the purpose of resolving the conflict between Dr. Dorfman and Dr. Cain, but his opinion is of diminished probative value and cannot be accorded special weight. The conflict, therefore, stands unresolved.

CONCLUSION

The Board finds that the Office has not met its burden of proof. The opinion obtained from the impartial medical specialist, Dr. Purohit, is not sufficiently rationalized to justify the termination of appellant's compensation.

⁵ See *Philip J. Deroo*, 39 ECAB 1294 (1988) (although the medical opinion of a physician does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal).

ORDER

IT IS HEREBY ORDERED THAT the December 30 and May 1, 2003 decisions of the Office of Workers' Compensation Programs are reversed.

Issued: August 16, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member