

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

CAROLYN BROWDER, Appellant

and

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

)
)
)
)
)
)
)
)

**Docket No. 04-960
Issued: August 9, 2004**

Appearances:
Carolyn Browder, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 1, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated November 26, 2003, in which an Office hearing representative affirmed the termination of appellant's compensation benefits on the grounds that she no longer had any residuals due to her accepted employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this termination case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits, effective March 23, 2003.

FACTUAL HISTORY

On November 8, 1999 appellant, a 53-year-old casual clerk, filed a traumatic injury claim alleging that she sustained a concussion and cervical strain on November 5, 1999 when another clerk threw a box and hit her in the head while she was placing mail in a box. The Office accepted the claim for cervicothoracic strain on December 1, 1999. Appellant stopped work on

November 10, 1999.¹ On June 20, 2000 the Office placed appellant on the periodic rolls for temporary total disability.

On April 19, 2001 the Office referred appellant to Dr. Robert P. Mantica, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Beejadi N. Mukunda, an attending Board-certified internist, who opined on January 4, 2000 that appellant remained totally disabled due to her November 5, 1999 employment injury and Dr. Sheldon Kaffen, an Office referral Board-certified orthopedic surgeon, who concluded on September 6, 2000 that appellant had no residuals due to her accepted employment injury.

In a report dated May 21, 2001, Dr. Mantica, based upon a physical examination, review of the medical records, employment injury history and statement of accepted facts, diagnosed lumbar arthritis, cervical degenerative disc disease and lumbar degenerative disc disease. He concluded:

“[T]he injury she had in 1999 at work with the mail tray may have caused temporary irritation of the underlying problems that she has in the cervical spine and the lumbosacral spine, but I don’t think [it] would permanently change the course of the degenerative disc disease or the arthritis or the ligamentous hypertrophy causing the stenosis.”

On July 18, 2001 the Office issued a notice of proposed termination of benefits based upon Dr. Mantica’s report that she no longer suffered from the effects of her November 5, 1999 employment injury.

In response to the Office’s proposal to terminate benefits, appellant submitted reports dated August 8 and 20, September 28, October 10 and November 20, 2001 from Dr. Edward James, an attending osteopath Board-certified in family practice, who opined that appellant continued to suffer from residuals of her accepted November 5, 1999 employment injury.

By decision dated January 8, 2002, the Office finalized the termination of benefits on the grounds that the effects of the November 5, 1999 employment injury had ceased. The Office found the weight of the evidence rested with the opinion of the impartial medical examiner, Dr. Mantica. It also found the reports of Dr. James were not probative as they contained no medical rationale to support his opinion that appellant continued to have residuals from her employment injury. The Office informed appellant that her benefits would be terminated effective January 27, 2002.

In a letter dated February 2, 2002, appellant’s counsel requested an oral hearing.

In a decision dated May 9, 2002, an Office hearing representative completed a preliminary review and concluded that the case was not in posture for a hearing. The hearing representative found the Office had not met its burden of proof to terminate appellant’s compensation benefits as Dr. Mantica’s report did not address the issue of whether appellant’s

¹ The Board notes that appellant’s temporary appointment as a casual employee with the employing establishment expired on December 31, 1999.

accepted condition had ceased. On remand, the Office was instructed to obtain a supplemental report from Dr. Mantica to clarify and explain his opinion with regards to whether there was objective evidence of an ongoing cervicothoracic strain due to appellant's November 5, 1999 employment injury. In addition, the Office was instructed to request Dr. Mantica to provide an opinion as to whether appellant's cervical and lumbar degenerative disc disease were causally related to her November 5, 1999 employment injury.

The Office attempted to refer the case back to Dr. Mantica, but was unable to contact him as his telephone number had been disconnected.

On June 10, 2002 the Office referred appellant to Dr. Mark R. Foster, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Mukunda, who opined appellant remained totally disabled due to her November 5, 1999 employment injury and Dr. Kaffen, who concluded that appellant had no residuals due to her accepted employment injury.

In a July 12, 2002 report, Dr. Foster, based upon a physical examination, review of the medical records and statement of accepted facts, concluded the accepted cervicothoracic strain had resolved. A physical examination revealed "forward flexion of lumbar spine of 40 degrees, extension of 5, which is a rather significant limitation." The physician noted that "despite the back pain, she did not have any complaints related to the cervicothoracic axis." Moreover, Dr. Foster reported the "axial compression pressing down on the head was negative." Appellant's range of motion in the cervical spine "was 10 degrees of extension, 30 degrees of flexion" and symmetric lateral rotation. A review of the objective evidence revealed "age-related degenerative changes" of the lumbar spine in a July 25, 2000 magnetic resonance imaging (MRI) test. Computerized tomography (CT) scans of the brain taken in November 1999 and February 2000 were normal. A July 25, 2000 MRI test of the cervical spine showed "relatively satisfactory preservation of the intervertebral disc spaces," a satisfactory neural foramina and "no significant neural compression. In concluding, Dr. Foster opined that there was "no objective evidence of any continued residual injury from the box that struck her head on November 5, 1999," that axial compression that is pressing on the head was negative and that "her primary limitation appears to be the evident depression and fear of returning to work." In addition, he reported that appellant had a "very high perception of disability" which did not correlate with her physical findings. He opined that the temporal sprain sustained due to the November 5, 1999 employment injury had fully resolved and "aggravation of the cervicothoracic spine has ceased." With regards to appellant's underlying condition, Dr. Foster opined that the condition was continuing and "unaffected by the temporary cervicothoracic sprain."

On January 22, 2003 the Office issued a notice of proposed termination of benefits. The Office found the opinion of Dr. Foster to constitute the weight of the evidence and established that she no longer had any disability due to her accepted November 5, 1999 employment injury. By decision dated March 4, 2003, the Office finalized the termination of appellant's compensation effective March 23, 2003.

Appellant's counsel requested an oral hearing in a March 14, 2003 letter. A hearing was held on October 22, 2003 at which appellant was represented by counsel and provided testimony.

Subsequent to the hearing appellant submitted an October 21, 2003 report from Dr. James. In his report, Dr. James diagnosed chronic pain syndrome, post-traumatic cephalgia, deconditioning myopathy syndrome, hypertension, intractable thoracic, cervical and lumbar strain with myoligamentous injury, depression and anxiety, right lower radiculopathy, gait dysfunction and carpal tunnel syndrome. Dr. James opined that appellant has had “a progressive downhill course” since November 12, 1999 due to “neck, back, headache and generalized body aches and pains, all associated with gait dysfunction and deconditioning.” With regards to Dr. Foster’s opinion that appellant’s cervicothoracic strain had resolved, Dr. James opined that “we are not dealing with temporal strain,” but with a patient who is permanently disabled due to the “trauma which occurred at work” on November 5, 1999. Dr. James opined that appellant’s recovery prognosis is poor and “she has progressed to chronic pain phase with disabling neck, back and shoulder pain.” In concluding, the physician opined that appellant was totally disabled due to her back, post-traumatic headaches and neck pain.

By decision dated November 26, 2003, the Office hearing representative affirmed the termination of benefits on the grounds that appellant had no further disability causally related to her accepted November 5, 1999 employment injury.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁵ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁶

ANALYSIS

The Office determined that there was a conflict in the medical opinion between Dr. Mukunda, appellant’s attending Board-certified internist, and Dr. Kaffen, an Office referral Board-certified orthopedic surgeon, as to whether appellant had any disability due to her accepted November 5, 1999 employment injury. In order to resolve the medical conflict, the

² *LaDonna M. Andrews*, 55 ECAB ____ (Docket No. 03-1573, issued January 30, 2004).

³ *Jaja K. Asaramo*, 55 ECAB ____ (Docket No. 03-1327, issued January 5, 2004).

⁴ *Daniel F. O’Donnell, Jr.*, 54 ECAB ____ (Docket No. 02-1468, issued February 28, 2003).

⁵ *Joseph Roman*, 55 ECAB ____ (Docket No. 03-1883, issued January 8, 2004); *James F. Weikel*, 54 ECAB ____ (Docket No. 01-1661, issued June 30, 2003).

⁶ *Donald T. Pippin*, 54 ECAB ____ (Docket No. 03-205, issued June 19, 2003).

Office properly referred appellant, pursuant to section 8123(a) of the Federal Employees' Compensation Act, to Dr. Mantica for an impartial medical examination and opinion.⁷

In situations where there exist 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 upon a proper factual background, must be given special weight.⁸ In a situation where the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from such specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original opinion. If the specialist is unwilling or unable to clarify and elaborate on his or her opinion, the case should be referred to another appropriate impartial medical specialist.⁹

The Office's procedure manual provides, "Only if the selected physician fails to provide an adequate and clear response after a specific request for clarification may the Office seek a second referee specialist's opinion."¹⁰ As the Office attempted to contact Dr. Mantica to provide a supplemental clarifying opinion, but his telephone was disconnected, the Office properly referred appellant for a second impartial medical evaluation with Dr. Foster on June 10, 2002.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinions of Dr. Foster, the second impartial medical specialist selected to resolve the conflict in the medical opinion. The report of Dr. Foster establishes that appellant had no residual disability due to her November 5, 1999 employment injury after March 22, 2003.

The Board has carefully reviewed the opinion of Dr. Foster and finds that it has reliability, probative value and convincing quality with respect to his stated conclusions regarding appellant's physical conditions. Dr. Foster's opinion was based on proper factual and medical histories, an accurate statement of accepted facts and the physician provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Dr. Foster provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing. Dr. Foster provided medical rationale for his opinion by explaining that appellant's cervicothoracic injury was fully resolved at the time of his examination. The diagnostic x-rays were found to be unremarkable. On examination

⁷ Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination. See *Joseph Roman*, 55 ECAB ____ (Docket No. 03-1883, issued January 8, 2004).

⁸ In situations where there exist 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 upon a proper factual background, must be given special weight. *LaDonna M. Andrews*, 55 ECAB ____ (Docket No. 03-1573, issued January 30, 2004); *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁹ *Guisepe Aversa*, 55 ECAB ____ (Docket No. 03-2042, issued December 12, 2003).

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.6(b) (September 1995).

he found that appellant had 10 degrees of extension and 30 degrees of flexion in her cervical spine. He also found no complaints relating to the cervicothoracic axis despite the back pain she experienced. Additionally, appellant's axial compression that was pressing on her head was negative. Dr. Foster attributed appellant's primary limitation to her depression and "fear of returning to work," which are unrelated to her accepted employment injury. Based on his examination, Dr. Foster opined that appellant's accepted cervicothoracic strain had resolved a significant time prior to his examination.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that she had disability causally related to her accepted injury.¹¹ Dr. James' October 21, 2003 report did not include a rationalized medical opinion establishing continuing disability due to her accepted November 5, 1999 employment injury. In his report, Dr. James diagnosed chronic pain syndrome, post-traumatic cephalgia, deconditioning myopathy syndrome, hypertension, intractable thoracic, cervical and lumbar strain with myoligamentous injury, depression and anxiety, right lower radiculopathy, gait dysfunction and carpal tunnel syndrome and opined that "we are not dealing with temporal strain," but with a patient who is permanently disabled due to the "trauma which occurred at work" on November 5, 1999. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship that is unsupported by medical rationale.¹² As Dr. James provided no medical rationale to support his opinion that appellant's disability is causally related to her November 5, 1999 employment injury, it is insufficient to create a new conflict with Dr. Foster.

CONCLUSION

As the report of the impartial medical examiner is well rationalized and based on a proper medical history, it is entitled to the special weight of the medical opinion evidence. The Board finds that the Office met its burden of proof to terminate appellant's compensation effective March 23, 2003.

¹¹ After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that she had an employment-related disability that continued after termination of compensation benefits; *see Manuel Gill*, 52 ECAB 282 (2001).

¹² *Conard Hightower*, 54 ECAB ____ (Docket No. 02-1568, issued September 9, 2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated November 26, 2003 is affirmed.

Issued: August 9, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member