

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

SUEDELL R. CIRWITTHEN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 04-1566
Issued: December 27, 2004**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On June 1, 2004 appellant filed a timely appeal of a decision dated June 23, 2003 in which a hearing representative of the Office of Workers' Compensation Programs affirmed a September 26, 2002 decision terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits for an employment-related right cervical strain/sprain and contusion to the head.

FACTUAL HISTORY

On March 6, 1987 appellant, then a 46-year-old postal distributor, sustained an employment-related cervical strain/sprain and contusion to the head when she was struck by boxes falling from a conveyor belt. She stopped work that day and did not return. The accepted

condition was later expanded to include depression. Since 1996 she has volunteered half days at the Moss Rehabilitation Clubhouse answering the telephone.

Appellant came under the care of Dr. Beth Manin, a Board-certified internist, who provided a work restriction evaluation dated September 1, 1998 in which she advised that appellant had a bipolar disorder and cognitive deficits related to a closed-head injury and was “mostly disabled from a neuropsychiatric standpoint.” She stated that appellant could possibly work one or two hours per day.

The Office continued to develop the claim, and referred appellant, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Robert D. Aiken, a Board-certified neurologist, for a second opinion evaluation regarding her head injury.

In a report dated May 1, 1999, Dr. Aiken noted his review of the medical record and findings on physical examination. He advised that any closed-head injury appellant had sustained had resolved and that she was capable of working in the position outlined on the statement of accepted facts. Dr. Aiken concluded that appellant did not suffer any organic residuals of the head injury but should continue to receive psychiatric/psychological support. In an attached work capacity evaluation, the physician advised that there was no reason appellant could not work eight hours a day and stated that she had no limitations to her physical activity.

The Office found a conflict in the medical opinion evidence between Dr. Manin and Dr. Aiken. On March 19, 2001 it referred her, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Dara G. Jamieson, Board-certified in neurology, for an impartial medical evaluation.

In a report dated March 23, 2001, Dr. Jamieson noted her review of the medical record and physical findings. She stated that no abnormal diagnostic testing correlated with appellant’s complaints but that she had become increasingly dysfunctional over time which, the doctor opined, was causally related to appellant’s psychiatric disease rather than a traumatic brain injury. Dr. Jamieson noted that appellant was unwilling to cooperate with a mental status examination. Appellant’s current complaints were not related to the head trauma sustained on March 6, 1987 and that she had no neurological residuals from this event. He concluded that appellant had no neurological disability or limitations. In an attached work capacity evaluation, Dr. Jamieson advised that there was no reason appellant could not work eight hours a day and had no limitations to her physical activity. He stated, however, that, while appellant had no neurological limitations, she had psychiatric symptoms.

By letter dated February 21, 2002, the Office informed appellant that it proposed to terminate the medical benefits for the accepted injuries of cervical strain/sprain and contusion to the head, because the medical evidence of record established that these conditions had resolved. The Office accorded special weight to the referee opinion of Dr. Jamieson. Appellant did not respond to the proposed termination.¹

¹ The Board notes that the record contains medical evidence submitted subsequent to the proposed termination. This, however, pertains to her psychiatric condition.

On July 1, 2002 the Office referred appellant, together with the medical record, a set of questions and the statement of accepted facts, to Dr. Anthony W. Salem, a Board-certified orthopedic surgeon, who was asked to answer from an orthopedic basis whether there were residuals of the cervical strain/sprain and to address if appellant had an orthopedic diagnosis or disability causally related to the March 6, 1987 employment injury.

In a report dated August 8, 2002, Dr. Salem noted his review of the medical records and findings on examination. He noted a history that two years prior appellant had her neck fused by Dr. Hilibrand at the Rothman Institute,² although the records were not available for his review. Dr. Salem advised that his x-ray of appellant's cervical spine demonstrated a solid anterior cervical fusion from C3 to C6 with an anterior plate impinging against the bone at C2 and some posterior spurring at those levels. Degenerative changes were noted below the fusion at C7. He opined that there was no orthopedic diagnosis prior to this surgery, noting his review of magnetic resonance imaging. Dr. Salem advised that, since surgery, appellant's neck examination was no longer normal with pain and stiffness. He opined that this was due to the surgery and not the original injury. Dr. Salem concluded that appellant's neck condition was not due to factors of employment and that she was not disabled from the employment injury. In an attached work capacity evaluation, Dr. Salem advised that appellant could work eight hours per day with no restrictions on sitting, walking, standing and reaching. He restricted reaching above the shoulder, pushing, pulling and lifting to two hours per day with a 20- to 30-pound weight restriction and provided no restrictions to squatting, kneeling, climbing or wrist and elbow repetitive movements. He stated that the restrictions were based on a postoperative condition of the cervical spine and were not due to the employment injury.

The Office noted that the case record had been reviewed, that a cervical fusion had not been authorized and that there was no evidence of record regarding the procedure. In a report dated September 10, 2002, an Office medical adviser suggested that the Office try to obtain hospital records regarding the fusion procedure. By letter dated September 11, 2002, the Office asked appellant to provide information regarding the surgery. In a letter dated September 24, 2002, appellant stated that the surgery was performed at Jefferson Hospital by Dr. Hilibrand but she could not remember the year or date.

By decision dated September 25, 2002 and finalized September 26, 2002, the Office terminated appellant's benefits for her nonpsychiatric conditions, crediting the opinion of Dr. Jamieson as to appellant's neurological status, and Dr. Salem regarding her orthopedic condition. The Office noted that appellant continued to be entitled to wage-loss compensation and medical benefits due to her accepted psychiatric condition.

² A Dr. Arthur S. Hilibrand, Board-certified in orthopedic surgeon, is affiliated with the Rothman Institute in Philadelphia, PA.

On September 30, 2002 appellant requested a hearing. On March 14, 2003 this was changed to a request for review of the written record.³ By decision dated June 23, 2003, an Office hearing representative affirmed the September 26, 2002 decision.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

In situations where 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.⁶

ANALYSIS

In the instant case, the Board found that a conflict in medical opinion existed between the opinions of Dr. Manin, appellant's treating physician, and Dr. Aiken, a Board-certified neurologist who provided a second opinion examination for the Office, regarding whether she continued to suffer from neurological residuals of her accepted injury. The Office referred appellant to Dr. Jamieson, also Board-certified in neurology, for an impartial medical evaluation.

By report dated June 23, 2001, Dr. Jamieson noted her review of the medical record and provided physical findings. She advised that appellant's current complaints were not related to the March 6, 1987 employment injury and that she had no neurological residuals from this event. In an attached work capacity evaluation, Dr. Jamieson advised that appellant could work eight hours a day with no limitations on her physical activity.

The Board finds the opinion of Dr. Jamieson is entitled to special weight and sufficient to meet the Office's burden of proof to terminate appellant's medical benefits for her nonpsychiatric conditions from a neurological standpoint. Dr. Jamieson provided thorough, well-rationalized reports in which she explained her findings and conclusions that any work-

³ Appellant continued to receive temporary total disability based on her psychiatric condition. She provided a number of medical reports from her attending Board-certified psychiatrist, Dr. Harry A. Doyle, who continued to advise that she could not work.

⁴ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁵ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁶ *Gloria J. Godfrey*, *supra* note 4.

related neurological condition had ceased. Her opinion, therefore, is entitled to special weight in that regard.⁷

In an August 8, 2002 report, Dr. Salem stated that, from an orthopedic standpoint, appellant had no residuals or disability caused by the accepted injury. While he provided some restrictions to her physical activity, he advised that she could work eight hours a day and concluded that the restrictions were based on appellant's postoperative condition following a cervical fusion, which was not due to the employment injury.

The Board finds the opinion of Dr. Salem is well rationalized regarding whether appellant continued to have any orthopedic condition causally related to the March 6, 1987 employment injury. The Office noted that it had not authorized cervical fusion surgery and requested that appellant furnish information regarding this procedure. This she did not do. The Board finds that the Office met its burden of proof to terminate appellant's benefits for her nonpsychiatric conditions on September 26, 2002.

CONCLUSION

The Board therefore finds that the Office met its burden of proof to terminate appellant's compensation benefits effective September 26, 2002.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 23, 2003 be affirmed.

Issued: December 27, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Id.*