



de Quervain's syndrome and shoulder tendinitis. In a September 12, 2002 report, Dr. Birnbaum stated that appellant required an ergonomic chair with adequate lumbar support.

In an October 21, 2002 report, Dr. Jeffrey M. Gross, a Board-certified physiatrist, listed a history of low back pain and of "an industrial accident that occurred at work on December 28, 2000. The accident resulted when she developed left upper extremity radiating pain into the left hand." Examination revealed a deficit of 30 degrees of flexion and 5 degrees of extension of the lumbar spine, a negative straight leg raising test, tenderness of the bilateral L5-S1 muscles, full range of motion of the left shoulder, tenderness of the rotator cuff, negative impingement, full range of motion of the left hand, tenderness of the lateral forearm muscles, and an intact neurological examination. Dr. Gross diagnosed "left shoulder tendinitis, left de Quervain's syndrome, left lateral epicondylitis, and lumbar strain due to her ergonomics which was caused by the accident that occurred on December 28, 2000." He recommended physical therapy to reduce pain and increase function, and stated that appellant had a "causally related moderate partial disability for prior work," though she was working.

The Office accepted that appellant's tendinitis of the left shoulder and lumbar strain were related to her employment and authorized the purchase of an ergonomic chair. It paid appellant compensation for temporary total disability beginning October 16, 2002, when she stopped work.

In a January 14, 2003 report, Dr. Gross noted that appellant complained of "persistent pain with restricted motion of the lumbar spine, left wrist and left shoulder. The patient is limited in sitting, bending, lifting, standing, use of the left upper extremity." Examination revealed a nearly full range of motion of the left shoulder and wrist, lack of 20 degrees of lumbar flexion, tenderness of the left rotator cuff and lumbar area, negative straight leg raising, and an intact neurological examination. Dr. Gross diagnosed "left shoulder tendinitis, left de Quervain's syndrome, left lateral epicondylitis, and lumbar strain due to her ergonomics which was caused by the accident that occurred on December 28, 2000." He recommended physical therapy to reduce pain and increase function and stated that appellant had a marked partial disability for prior work and was not working. A March 18, 2003 report from Dr. Gross contained the same complaints, findings on examination,<sup>1</sup> diagnoses, recommendation of treatment and statement on disability.

On March 18, 2003 the Office referred appellant, together with medical reports and a statement of accepted facts, to Dr. Kenneth Falvo, a Board-certified orthopedic surgeon, for an evaluation of her condition and her ability to work. In an April 7, 2003 report, Dr. Falvo set forth appellant's history and reviewed the prior medical reports. Examination revealed use of a left wrist splint, painless and full range of motion of both shoulders, no atrophy of the shoulder girdles, active and equal reflexes of the upper and lower extremities, good grip strength bilaterally, no loss of pinprick sensation in the digits or the lower extremities, a negative Phalen's test, an absent Tinel's sign, equal wrist and calf circumferences, and a negative straight leg raising test. Ranges of motion were reported as follows: for the wrists, 90 degrees dorsiflexion, 70 degrees palmar flexion, 20 degrees radial deviation, 30 degrees ulnar deviation, and good thumb opposition to the little fingers; for the lumbar spine, 90 degrees flexion, 25

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<sup>1</sup> The only exception was a lack of 10, instead of 20, degrees of lumbar motion.

degrees extension, 30 degrees lateral right and left bending, and 30 degrees right and left rotation. Dr. Falvo diagnosed healed tendinitis of the left wrist and resolved low back sprain and stated: "Considering the length of time that symptoms for the lower back have existed, I believe that an ergonomic chair should be provided to the claimant. There is no further treatment, testing or follow up necessary." Regarding disability, Dr. Falvo stated: "There is no disability. Provided with the use of the ergonomic chair, there are no restrictions for her usual occupation in a full-time capacity as a caseworker."

On April 24, 2003 the Office issued a proposed termination of compensation on the basis that the weight of the medical evidence established that appellant had no continuing disability and did not require any further treatment.

By letter dated May 6, 2003, the employing establishment directed appellant to report back to work at her position of social worker immediately, and advised her that an ergonomic chair had been ordered and was in her office. In a May 9, 2003 letter to the employing establishment, appellant contended that any job offer must be presented in writing, contain any job restrictions, and be reviewed by her attending physician. Appellant's attorney objected to the proposed termination of appellant's compensation in a May 14, 2003 letter, noting that Dr. Gross still considered her disabled.

By decision dated May 27, 2003, the Office terminated appellant's compensation on the basis that the weight of the medical evidence established that she had no continuing disability and did not require any further treatment.

Appellant requested a hearing, which was held on November 13, 2003. She submitted May 13 and June 24, 2003 reports from Dr. Gross that contained the same complaints, findings on examination, diagnoses, recommendation of treatment, and statement on disability as his January 14 and March 18, 2003 reports, with the exception that the new reports characterized appellant's disability for her prior work as "marked moderate partial disability." The June 24, 2003 report added a statement that appellant was "unable to do her prior work. THIS IS INDEFINITE." A December 1, 2003 report from Dr. Gross noted appellant's complaints of persistent pain with restricted range of motion in the left wrist and shoulder and limited use of the left upper extremity, reported a nearly full range of motion of the left shoulder on examination, contained the same diagnosis as his prior 2003 reports, indicated a moderate partial disability for her prior work, and stated that she could return to work two days per week with typing limited as much as possible.

By decision dated February 5, 2004, an Office hearing representative found that the Office met its burden of proof to terminate appellant's compensation, as Dr. Falvo's report constituted the weight of the medical evidence and Dr. Gross did not explain his support of continuing disability in light of the paucity of objective findings.

### **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.<sup>2</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>3</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further treatment.<sup>4</sup>

In assessing the medical evidence, the weight of such evidence is determined by its reliability, its probative value, its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the doctor's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the doctor's opinion are factors which enter into such evaluation.<sup>5</sup> The absence of objective evidence of disability is more compatible with absence of disability than with its presence.<sup>6</sup>

### ANALYSIS

The Office met its burden of proof to terminate appellant's compensation with the April 7, 2003 report of Dr. Falvo, the Board-certified orthopedic surgeon to whom it referred appellant for a second opinion evaluation. This report contained extensive findings on physical examination, all of which were essentially normal. Based on these findings and his review of the prior medical evidence, Dr. Falvo concluded that appellant's tendinitis of the left wrist had healed and her low back sprain had resolved. The absence of any objective findings of disability lends credence to Dr. Falvo's conclusion that appellant needed no restrictions to perform the job of social worker she was performing before she was injured, and that she needed no further medical treatment. His recommendation of an ergonomic chair cannot be considered an impediment to working in her regular position, given that the employing establishment informed her that an ergonomic chair had been purchased and placed in her office.

The reports of Dr. Gross, appellant's attending Board-certified physiatrist, are entitled to less weight than that of Dr. Falvo. The only objective finding in any of Dr. Gross' reports on and after January 14, 2003 was a slight limitation of lumbar and left shoulder motion. Dr. Gross based his opinion that appellant was disabled and needed further medical treatment on her subjective complaints that she was limited in sitting, bending, lifting, standing and use of the left upper extremity. But appellant's complaints did not correspond to Dr. Gross' findings on examination. In his January 14, March 18, May 13 and June 24, 2003 reports, Dr. Gross noted that appellant complained of "restricted motion of the lumbar spine, left wrist, left shoulder." In each of these reports, Dr. Gross reported a nearly full range of shoulder and wrist motion and a lack of 10 to 20 degrees of lumbar flexion. None of these reports describes what finding or

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<sup>2</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>3</sup> *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>5</sup> *Melvina Jackson*, 38 ECAB 443, 449 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1959).

<sup>6</sup> *Anna Chrun*, 33 ECAB 829 (1982).

condition Dr. Gross considered disabling, or provides sufficient explanation as to why she should be considered disabled for the position of social worker.

**CONCLUSION**

The Office met its burden of proof to terminate appellant's compensation effective May 27, 2003 by establishing by the weight of the medical evidence that her disabling employment-related conditions had resolved.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 5, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 1, 2004  
Washington, DC

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member