

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

SARAH A. LAWSON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Thibodaus, LA, Employer**

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**Docket No. 04-825
Issued: July 13, 2004**

Appearances:
Sarah A. Lawson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 9, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated October 14, 2003 which terminated her medical benefits on the grounds that she no longer had any residuals due to her accepted July 27, 2000 employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this termination claim.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's benefits effective October 14, 2003 on the grounds that she had no further disability or condition causally related to her July 27, 2000 employment injury.

FACTUAL HISTORY

On July 27, 2000 appellant, a 42-year-old rural carrier, filed a traumatic injury claim alleging that she injured her neck, chest and back due to an automobile accident. The Office accepted the claim for contusion to the chest wall and neck strain. The Office subsequently

expanded the claim to include aggravation of C6-7 degenerative disc disease and authorized a C6-7 anterior cervical discectomy and fusion, which occurred on May 23, 2001.¹ Appellant accepted an offer of a light-duty position on August 11, 2000.²

In a May 5, 2003 electromyography report, Dr. Todd D. Cowen, a Board-certified physiatrist, reported “no abnormal muscle membrane irritability in the muscles tested in the left arm and neck.” With regard to the history of injury, the physician noted appellant was involved in a motor vehicle accident in July 2000 and sustained a cervical disc problem, which subsequently required a cervical fusion. A physical examination of the upper extremities revealed a normal motor examination of the arms, shoulders and hands. He reported that appellant “continued to have some residual neck soreness” due to “her initial injury.”

On April 18, 2003 the Office referred appellant to Dr. Christopher E. Cenac, a Board-certified orthopedic surgeon, for a second opinion as to whether she continued to have residuals of her accepted cervical condition. In an attached statement of accepted facts, the Office noted that it accepted that appellant sustained a cervical strain and contusion of the chest wall secondary to her employment-related automobile accident on July 27, 2000. In an April 19, 2003 addendum to the statement of accepted facts, the Office noted it accepted an aggravation of C6-7 degenerative disc disease and authorized an anterior cervical fusion at C6-7 on May 23, 2001.

In a July 31, 2003 report, Dr. Cenac concluded there was no objective evidence to support a “currently active cervical condition” and she did not require any further treatment for her contusion of the chest wall and cervical degenerative disease. Dr. Cenac noted appellant “alleges an injury to her neck, back and chest as a result of a motor vehicle accident July 27, 2000 and a reinjury in the second motor vehicle accident November 5, 2001.” With regards to a physical examination, Dr. Cenac reported no muscle spasm in the neck or back. The physician reported normal chest x-ray interpretations and mild degenerative changes were noted at C5-6. In an attached work capacity evaluation (Form OWCP-5c), Dr. Cenac stated that appellant was capable of working eight hours a day with restrictions on reaching above the shoulder and noted her restrictions were permanent.

In August 26 and September 8, 2003 treatment notes, Dr. H. Lawrence Haydel, a treating Board-certified orthopedic surgeon, reported continued neck and low back pain.

On September 12, 2003 the Office issued a notice of proposed termination of medical benefits on the grounds that she no longer had any residuals due to her accepted employment injury. The Office found that the opinion of Dr. Cenac constituted the weight of medical opinion. On October 14, 2003 the Office finalized the termination of her medical benefits.

¹ Appellant returned to work effective September 11, 2001.

² On April 16, 2003 the Office issued a loss of wage-earning capacity decision in which it found the position of modified rural carrier fairly and reasonably represented her wage-earning capacity.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.⁴ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ 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.⁷

ANALYSIS

In the instant case, the Office accepted appellant's claim for contusion to the chest wall, neck strain, aggravation of degenerative disc disease at C6-7 and authorized surgery for an anterior cervical discectomy and fusion at C6-7. The issue is whether these accepted conditions of contusion to the chest wall, neck strain and aggravation of degenerative disc disease at C6-7 caused appellant any disability for work or necessitated continuing medical care as of October 14, 2003 when the Office terminated her compensation in the form of medical benefits. In terminating appellant's medical benefits compensation, the Office relied upon the opinion of Dr. Cenac, an Office referral physician.

Dr. Cenac performed a physical examination and noted appellant alleged "an injury to her neck, back and chest as a result of a motor vehicle accident July 27, 2000 and a reinjury in the second motor vehicle accident November 5, 2001." He concluded that there was no objective evidence to support a "currently active cervical condition" and that no further medical treatment was required for her contusion of the chest wall and cervical degenerative disease. Dr. Cenac further noted that appellant was capable of working with permanent restrictions on reaching above her shoulders. The report by Dr. Cenac is insufficient to support the Office's burden for several reasons. First, his conclusions regarding whether appellant has any residuals are contradictory. While he opined that appellant had no residuals due to her employment injury, he also concluded that appellant had permanent restrictions on reaching above her shoulders. One of the questions posed to Dr. Cenac by the Office was whether appellant's restrictions in the limited-duty job were permanent. The record reveals that her limited-duty job required no lifting

³ *LaDonna M. Andrews*, 55 ECAB ____ (Docket No. 03-1573, issued January 30, 2004).

⁴ *Jaja K. Asaramo*, 55 ECAB ____ (Docket No. 03-1327, issued January 5, 2004); *Elsie L. Price*, 54 ECAB ____ (Docket No. 02-755, issued July 23, 2003).

⁵ *Daniel F. O'Donnell, Jr.*, 54 ECAB ____ (Docket No. 02-1468, issued February 28, 2003).

⁶ *LaDonna M. Andrews*, *supra* note 3; *James F. Weikel*, 54 ECAB ____ (Docket No. 01-1661, issued June 30, 2003); *Barbara Johnsen (James C. Johnsen)*, 54 ECAB ____ (Docket No. 03-1738, issued September 30, 2003) (to be of probative value, the physician must provide rationale for the opinion reached).

⁷ *Donald T. Pippin*, 54 ECAB ____ (Docket No. 03-205, issued June 19, 2003).

over 30 pounds and no repetitive overhead work. Dr. Cenac provided no explanation as to the basis of appellant's permanent restrictions on reaching above the shoulders. He did not attribute the condition to a nonemployment condition nor provided an explanation as to why the restrictions on lifting above the shoulder were not related to her accepted cervical injury. Medical opinions from physicians which contain contradictory statements are equivocal and thus are of little probative value.⁸ Secondly, Dr. Cenac did not base his opinion upon the statement of accepted facts. In relaying the history of appellant's injury, he related that appellant alleged that she sustained an automobile accident on July 27, 2000 and that she sustained a reinjury in the second motor vehicle accident on November 15, 2001. The Office has accepted that appellant sustained an employment-related automobile accident on July 27, 2000. The record contains no evidence of a second automobile accident on November 15, 2001. The Board has held that reports of a referral physician were of diminished probative value where the referral physician disregarded a critical element of the statement of accepted facts.⁹ In addition, the Board has held that medical conclusions based on inaccurate or incomplete histories are of diminished probative value.¹⁰ For these reasons, Dr. Cenac's report is insufficient to constitute the weight of the medical opinion evidence and establish the Office's burden of proof that appellant's current condition is not causally related to her accepted employment injury. The Office has failed to provide rationalized medical opinion evidence in support of its decision to terminate appellant's compensation in the form of medical benefits.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's benefits effective October 14, 2003 on the grounds that she had no further disability or condition causally related to her July 27, 2000 employment injury.

⁸ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (Medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

⁹ *Paul King*, 54 ECAB ____ (Docket No. 02-2189, issued January 17, 2003).

¹⁰ *John W. Montoya*, 54 ECAB ____ (Docket No. 02-2249, issued January 3, 2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 14, 2003 is reversed.

Issued: July 13, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member