



compensation in the above-reference cases and eventually combined the cases into a master file under claim number 09-0350427.

On December 3, 2001 appellant filed a Form CA-7 claim for compensation for the period May 26 through December 12, 2001. In a December 20, 2001 letter, the Office advised appellant that medical evidence establishing disability for work during the entire period of the claim was needed. In a previous letter of June 29, 2001, the Office had requested that Dr. Brenda S. Stringer, a Board-certified internist and appellant's treating physician, provide objective evidence and provide an explanation how and why appellant's current symptoms were related to the work injury, which had occurred 10 years prior. The Office additionally had advised that the claim was not accepted for the condition of degenerative cervical disc disease.

In a July 2, 2001 letter, Dr. Stringer noted that she had recently acquired appellant as a patient on March 14, 2001. She indicated that a review of appellant's chart revealed exacerbations of cervical strain on several occasions and stated that she had assumed that this was a chronic, ongoing condition secondary to her injury in 1989. In a July 9, 2001 duty status report, Dr. Stringer opined that appellant could only work four hours per day due to her cervical strain.

In a January 8, 2002 letter, Dr. Stringer advised that appellant suffered from cervical strain and spasm, as well as degenerative disc and joint disease of the cervical spine with spinal cord compression, as evidenced in the enclosed magnetic resonance imaging (MRI) scan report. She stated that appellant had right shoulder pain and tingling and numbness in her right arm and hand. Physical examination revealed decreased deep tendon reflexes of one quarter in the right upper extremity, as well as decreased sensation to pinprick. Dr. Stringer stated that appellant was placed on a four-hour workday with restrictions because of those symptoms.

In a January 16, 2002 letter, the Office informed appellant that a second opinion evaluation was necessary to determine whether she had any remaining residuals from her multiple work injuries of 1989, 1990 and 1999. On January 21, 2002 the Office referred appellant, together with a statement of accepted facts, a set of questions and a copy of the case record, to Dr. Alan H. Wilde, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a February 8, 2002 report, Dr. Wilde presented examination findings and noted findings on March 14, 2001 x-rays of the cervical spine and a September 11, 2001 MRI scan. Dr. Wilde opined that appellant had cervical arthritis at C3-4, C4-5, C5-6 and C6-7. He stated that, from the injuries described, he would expect that she would have had symptoms from a cervical strain lasting approximately six weeks and opined that appellant would have reached maximum medical improvement six weeks after her last injury or November 17, 1999. Dr. Wilde stated that appellant's current symptoms were on the basis of osteoarthritis of her cervical spine, as documented in her x-rays and the MRI scan and were the result of the aging process. He advised that appellant's current need for restrictions stemmed from the condition of osteoarthritis of her cervical spine and related that appellant was not at maximum medical improvement from her current condition of osteoarthritis as she might improve with a cervical fusion. In a work capacity evaluation form dated February 8, 2002, Dr. Wilde opined that appellant could work four hours a day with restrictions.

In a February 27, 2002 report, Dr. Stringer opined that it was possible that appellant had suffered the disc herniations in the course of her work. She further stated that perhaps appellant's episodes of cervical spasm were exacerbated by symptoms from her disc herniations, as a result of her duties on the job, including repetitive neck and shoulder motions. Dr. Stringer continued to request physical therapy to treat appellant's cervical sprain and strain and cervical disc herniations.

The Office found that a conflict in medical opinion existed between Dr. Stringer, appellant's attending physician and Dr. Wilde, the second opinion specialist, over whether appellant's continuing disability was causally related to her employment, the degree of disability associated with her work-related condition and the physical limitations imposed by residuals from her work injury.

On June 13, 2002 the Office referred appellant to Dr. Ralph J. Kovach, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a July 1, 2002 report, Dr. Kovach reviewed the statement of accepted facts along with appellant's entire chart, noted her current symptoms and presented his examination findings. Dr. Kovach diagnosed cervical degenerative disc disease extending from C3 to 7. He opined that the degenerative disc disease was on the basis of osteoarthritis and was not the result of the cervical strain. The physician stated that cervical strain was the allowed diagnosis and advised that it would have subsided in approximately one and a half months each time the strain had occurred. Dr. Kovach stated that the changes of osteoarthritis, as observed by Dr. Wilde and agreed to by him, were not the result of work injury, but were a result of the aging process. Dr. Kovach further opined that appellant's complaints about her right shoulder were on the basis of a localized fibromyalgia syndrome and not a cervical spine. He noted that the examination showed no clinical evidence of radiculopathy or any evidence of myopathy, although she did have MRI scan findings on the report of September 11, 2001. Dr. Kovach opined that appellant required restriction in her work because of her cervical osteoarthritis and her localized fibromyalgia, but opined that she had fully recovered from the episodes of cervical strain. Dr. Kovach noted that his agreement with Dr. Wilde that appellant should have recovered from her cervical strain approximately six weeks after the injuries and, specifically, six weeks after her last documented injury on November 17, 1999. In a July 25, 2002 report, Dr. Kovach advised that the fibromyalgia syndrome present on his examination of appellant's right shoulder was not caused by any of the specific work injuries noted in the statement of accepted facts.

On August 27, 2002 the Office issued a proposed notice of termination of compensation. The Office advised appellant that her compensation for wage-loss and medical benefits was being terminated because she no longer had any continuing injury-related disability from her work-related injuries. The Office indicated that the weight of the medical evidence, as demonstrated by the opinion of Dr. Kovach, supported that she had no continuing objective residuals of her accepted soft tissue injuries and that her ongoing need for treatment and work restrictions stemmed from nonwork-related degenerative disc disease at C3-7 and shoulder fibromyalgia.

By letter dated September 24, 2002, appellant, through her attorney, expressed disagreement with the proposed termination of compensation and submitted additional medical reports. In a September 10, 2002 medical report, Dr. Stringer advised that she continued to opine

that appellant's cervical disc herniation and related symptoms were a result of her work-related injury. In a September 18, 2002 report, Dr. Clifford J. Molin, a Board-certified internist, advised that he was requested to evaluate appellant's neck discomfort and right arm numbness to determine whether it was related to a previously determined work injury, documented as a cervical strain, which mainly involved the right shoulder and neck. Dr. Molin noted that a September 12, 2001 MRI scan revealed multiple level disc herniation with multilevel canal diameter narrowing and presented his examination findings. A persistent cervical strain, right upper back muscle strain was diagnosed. He noted that those symptoms had been present, but were worse than on previous evaluations and were consistent with the MRI scan findings of September 12, 2001. Dr. Molin opined that, at this time the symptoms appellant was experiencing and the findings, which were evident on his examination were a progression of her previously diagnosed condition of right shoulder strain and right upper back muscle strain. Copies of Dr. Molin's chart notes from 1994 were also included.

By decision dated October 3, 2002, the Office finalized its proposed termination of benefits effective the same day. The Office indicated that the medical evidence of record, as indicated by Dr. Kovach's opinion, supported that the accepted condition of cervical strain had resolved and that appellant's ongoing complaints stemmed from a nonwork-related degenerative disc disease at C3-7 and shoulder fibromyalgia. Accordingly, the Office denied the compensation claimed from May 26, 2001 and ongoing as the medical evidence of file did not support that appellant's part-time work schedule was the result of her accepted work injuries.

In an October 30, 2002 letter, appellant, through her attorney, disagreed with the Office's decision and requested a hearing, which took place on July 30, 2003. The record indicates that appellant underwent a C5-6 corpectomy on December 12, 2002 and a functional capacity evaluation on March 3, 2003. Appellant also filed a recurrence claim on December 10, 2002 for a recurrence of disability commencing November 4, 2002.<sup>1</sup>

By decision dated October 14, 2003, an Office hearing representative affirmed the October 3, 2002 decision. The Office hearing representative indicated that Dr. Kovach's opinion constituted the weight of the medical evidence.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>2</sup> 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>3</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>4</sup> To

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<sup>1</sup> With regard to appellant's recurrence claim, there is no final decision issued by the Office for the Board to review. Therefore, the Board will not address this issue on appeal. 20 C.F.R. § 501.2(c).

<sup>2</sup> *Manuel Gill*, 52 ECAB 282 (2001); *Lawrence D. Price*, 47 ECAB 120 (1995).

<sup>3</sup> See *Mary A. Lowe*, 52 ECAB 223 (2001).

<sup>4</sup> *Id.* See also *Furman G. Peake*, 41 ECAB 361, 364 (1990).

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.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

In this case, the Office terminated appellant's compensation and medical benefits based on the reports of Dr. Kovach, who served as the impartial medical specialist. The Office found that a conflict of medical opinion existed between the second opinion physician, Dr. Wilde, a Board-certified orthopedic surgeon, who opined that appellant had reached maximum medical improvement from her last cervical strain six weeks after the injury on November 17, 1999 and that her current condition of osteoarthritis of the cervical spine and resulting restrictions were the result of the aging process and the attending physician, Dr. Stringer, a Board-certified internist, who opined that appellant's cervical strain and spasms with degenerative disc and joint disease of the cervical spine were causally related to the accepted employment injuries and that appellant's disc herniations could have been exacerbated by her episodes of cervical spasm as a result of her job duties. As there was a conflict in the medical opinion evidence, the Office properly referred appellant for an impartial medical examination by Dr. Kovach, a Board-certified orthopedic surgeon.<sup>6</sup>

In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>7</sup>

In his July 1 and July 25, 2002 reports, Dr. Kovach reviewed the entire case record and statement of accepted facts. He examined appellant thoroughly and related his clinical findings. Based on his examination, which showed no evidence of radiculopathy or any evidence of myopathy and a September 11, 2001 MRI scan examination report as well as the actual images, Dr. Kovach opined that the degenerative disc disease was on the basis of osteoarthritis and was the result of the aging process, not the work injuries. He further opined that appellant's localized fibromyalgia was not caused by any of the work injuries noted in the statement of accepted facts. Dr. Kovach opined that appellant had fully recovered from the episodes of cervical strain and agreed with Dr. Wilde that appellant should have recovered from her cervical strain approximately six weeks after her injuries, which would have been six weeks after her last documented injury of November 17, 1999. Dr. Kovach further opined that appellant required restrictions in her work because of her cervical osteoarthritis and her localized fibromyalgia conditions.

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<sup>5</sup> See *Mary A. Lowe*, *supra* note 3.

<sup>6</sup> The Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994). A simple disagreement between two physicians does not, of itself, establish a conflict. To constitute a true conflict of medical opinion, the opposing physician's reports must be of virtually equal weight and rationale. 20 C.F.R. §§ 10.321(a), 10.502 (1999); see *Robert D. Reynolds*, 49 ECAB 561, 565-66 (1998).

<sup>7</sup> *Michael Hughes*, 52 ECAB 387 (2001); *Manuel Gill*, *supra* note 2.

The Board finds that Dr. Kovach provided an opinion that is sufficiently well rationalized to resolve the issue over whether appellant's continuing disability was causally related to her accepted work injuries. He had reviewed the entire case record and statement of accepted facts and had examined appellant along with the September 11, 2001 MRI scan examination report as well as the actual images. He additionally provided well-reasoned rationale as to why appellant's current medical conditions of degenerative cervical disc disease and right shoulder fibromyalgia and work restrictions were not causally related to her accepted work injuries. The Board finds that Dr. Kovach's opinion represents the weight of the medical evidence establishing that appellant's current medical condition and restrictions are not residuals from her accepted work injuries.

The medical evidence appellant submitted subsequent to Dr. Kovach's reports is insufficient to overcome the special weight accorded to his medical opinion as the impartial medical specialist. In her September 10, 2002 report, Dr. Stringer continued to opine that appellant's cervical disc herniation and related symptoms were causally related to her work-related injury. In her February 27, 2002 report, Dr. Stringer had opined that "it was possible" that appellant had suffered her herniated cervical disc in the course of her work and advised that "perhaps" appellant's episodes of cervical spasm were exacerbated by symptoms from her disc herniations as a result of the repetitive neck and shoulder motions of her job duties. While appellant's treating physician stated that appellant's current conditions were causally related to her accepted work injuries, the physician did not explain or provide medical rationale supporting the conclusion. As her reports were merely conclusory and were couched in speculative or equivocal terms, they are of diminished probative value and insufficient to show how appellant's current conditions were caused, precipitated, accelerated or aggravated by the accepted work injuries.<sup>8</sup> Furthermore, Dr. Stringer, appellant's attending physician, was on one side of the conflict resolved by Dr. Kovach. Therefore, the physician's report is insufficient to overcome the weight of the impartial medical specialist's reports or to create a new conflict of medical opinion.<sup>9</sup>

In his September 18, 2002 report, Dr. Molin advised that appellant's current symptoms and findings on his examination were a progression of her previously diagnosed conditions of right shoulder strain and right upper back muscle strain. However, he failed to provide any medical reasoning to support a conclusion of causal relationship.<sup>10</sup> Additionally, Dr. Molin's chart notes from 1994 predate the proposed termination and are of no value in establishing appellant's claim.<sup>11</sup> Therefore, the physician's reports are insufficient to overcome the weight of the impartial medical specialist's reports or to create a new conflict of medical opinion.<sup>12</sup>

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<sup>8</sup> See *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>9</sup> See *Michael Hughes*, *supra* note 7; *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).

<sup>10</sup> See *Ricky S. Storms*, *supra* note 8.

<sup>11</sup> *Id.*

<sup>12</sup> See *Michael Hughes*, *supra* note 7.

Dr. Kovach's opinion represents the weight of the medical evidence establishing that appellant's current medical conditions and restrictions are not residuals from her accepted work injuries. Therefore, the Board finds that the Office properly terminated appellant's compensation and medical benefits effective October 3, 2002.

### **LEGAL PRECEDENT -- ISSUE 2**

If the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that she had continuing disability causally related to her accepted employment injury.<sup>13</sup> To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not established that she has any continuing disability causally related to her accepted employment injuries on or after October 4, 2002. A functional capacity evaluation has no bearing on the issue in question. Although the record contains evidence that appellant underwent a C5-6 corpectomy on December 12, 2002 no physician rendered an opinion as to the cause of appellant's spinal cord compression, which was found on the September 2001 MRI scan and which necessitated the surgery. As such, the Board finds that the evidence submitted is insufficient to meet appellant's burden of proof to establish that she had any disability on or after October 4, 2002, causally related to her employment injuries. Appellant has not provided the necessary rationalized medical opinion evidence to establish that she has a continuing condition or disability causally related to her employment. As she has not submitted such evidence, appellant has failed to meet her burden of proof and the Office properly denied appellant's claim for continuing disability and medical residuals on or after October 4, 2002.

### **CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's compensation and medical benefits on October 3, 2002. The Board further finds that appellant failed to establish that she has a continuing condition or disability causally related to her

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<sup>13</sup> See *Manuel Gill*, *supra* note 2; *George Servetas*, 43 ECAB 424, 430 (1992).

<sup>14</sup> See *Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

employment injuries of January 24, 1989, December 13, 1990 and November 17, 1999 on or after October 4, 2002.

**ORDER**

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

Issued: May 18, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member