

The Office accepted that appellant sustained a cervicothoracic strain (CTS) and bilateral CTS in the performance of duty.

In a January 9, 2001 report, appellant's attending physician, Dr. Prabhjot Khalsa, a Board-certified neurologist with a subspecialty certificate in clinical neurophysiology, diagnosed intractable cervical strain and intractable bilateral CTS. In a January 25, 2001 report, Dr. Khalsa stated that a January 17, 2001 magnetic resonance imaging (MRI) scan showed minimal bulging at C4-5 and C6-7 but no cervical radiculopathy, and that an electromyogram (EMG) showed no median or ulnar neuropathy. Dr. Khalsa stated that appellant's median nerve injury had resolved, that he had residual clinical symptoms of CTS, and that he could not perform his usual and customary job. In a March 8, 2001 report, Dr. Khalsa indicated that appellant had permanent work restrictions of no repetitive hand use over four hours per day, and no pushing/pulling/lifting of over 15 pounds. In an October 29, 2001 report, Dr. Khalsa stated that appellant was performing four hours per day of modified duty with difficulty, and that he should continue such work for three months.

On November 6, 2001 the Office referred appellant, prior medical reports and a statement of accepted facts to Dr. Jerrold Sherman, a Board-certified orthopedic surgeon, for a second opinion of whether his conditions continued to be related to his employment. In a November 15, 2001 report, Dr. Sherman set forth appellant's history, complaints and findings on examination and reviewed the prior medical reports. He diagnosed resolved cervical and thoracic strain without neurologic or mechanical deficit and resolved CTS without neurologic or mechanical deficit. Dr. Sherman concluded:

“[Appellant] presently has no factors of disability. Objectively, there are no abnormalities on physical examination, and the MRI [scan] and electrical studies are consistent with his normal physical examination. His subjective complaints are not consistent with his normal MRI [scan], electrical studies, and physical examination today.”

In a February 21, 2002 report, Dr. Khalsa stated that appellant's restrictions were unchanged, that he could perform modified work 20 hours per week, and that the lack of an ergonomic workstation was exacerbating his symptoms.

On March 1, 2002 the Office referred appellant, the case record and a statement of accepted facts to Dr. Thomas D. Schmitz, a Board-certified orthopedic surgeon, to resolve the conflict of medical opinion of whether appellant continued to suffer residuals of his employment-related condition. In a March 14, 2002 report, Dr. Schmitz set forth appellant's history, reviewed prior medical reports and a job description for the position of data conversion operator, and described findings on physical examination, which included negative Tinel's and Phalen's tests, essentially normal grips as measured by Jamar dynamometer, no sensory losses in the upper extremities, ability to bring his chin within two inches of his chest and of his shoulders, and neck rotation and extension to 45 degrees. Dr. Schmitz recommended that appellant “use his wrist gauntlets at night as well” and that he perform intrascapular and cervical flexion exercises. He concluded: “With the help of the exercises and an ergonomic chair/workstation, he should be able to return to work for six h[ou]r[s], beginning in one month. He should be able to return to regular duty (eight h[ou]r[s] per day) in two months.”

In response to an Office request for clarification of his report, Dr. Schmitz submitted a supplemental report dated April 10, 2002 in which he stated that, with regard to permanent residuals from the November 22, 1999 injury, appellant had no objective factors of disability in his upper extremities, low back or lower extremities. Dr. Schmitz characterized the x-ray findings of mild straightening of the cervical spine and the MRI [scan] findings of minimal bulging at C4-5 and less at C6-7 as within normal limits for a patient of appellant's age.

In an April 16, 2002 letter, the Office advised Dr. Schmitz that his reports had not resolved the conflict of whether appellant continued to suffer residuals of his accepted condition, and requested that he specifically address this question. In an April 17, 2002 report, Dr. Schmitz stated that in his opinion appellant did not have any objective factors of disability, that his x-ray and MRI scan findings were not causally related to his accepted cervicothoracic strain but were age related, and that his bilateral CTS was "not a factor at this time," as appellant had negative Tinel's and Phalen's tests and good grip strength. Dr. Schmitz stated that the only restriction necessary was an ergonomic chair that would elevate to the correct level, adding, "[Appellant] is a tall individual and should, for that reason, have an appropriate desk and chair for his workstation. ... He tells me that he has to bend over often at his workstation due to his height and the level of his desk and chair."

On April 26, 2002 the Office issued a notice of proposed termination of compensation, including medical benefits, on the grounds that the weight of the medical evidence established that appellant no longer had disability or residuals causally related to his November 22, 1999 employment injury.

In response, appellant requested copies of all correspondence between the Office and Drs. Sherman and Schmitz, stating that he could submit his argument only after reviewing this information. In a May 6, 2002 letter, appellant requested a copy of his entire case file, which the Office sent to him. In a May 28, 2002 letter, appellant contended that the recommendations and restrictions of Dr. Schmitz indicated that he still had residuals of his employment injury. Appellant submitted a May 23, 2002 report from Dr. Khalsa, who stated that appellant continued "to have difficulty working even four hours per day due to exacerbation of his ongoing symptoms including neck pain, shoulder pain, upper extremity pain, as well as hand paresthesias and numbness." On examination Dr. Khalsa found restricted cervical motion, paraspinous tenderness and spasm in the cervical region extending to the trapezius muscles, restricted motion of the shoulders secondary to pain, mild Tinel's sign over both wrists, positive Phalen's testing in both hands, no focal weakness in the upper extremity musculature and no focal sensory deficits. Dr. Khalsa noted that appellant's condition had symptomatically progressed since his last visit in February 2002 but that his examination was essentially unchanged and his restrictions for work remained the same: four-hour workdays with no repetitive hand use and no pushing, pulling or lifting over 15 pounds. Dr. Khalsa diagnosed intractable cervical-thoracic and upper extremity strain and persistent, symptomatic CTS without any residual median neuropathy. Dr. Khalsa stated that he had reviewed the reports of Drs. Sherman and Schmitz and disagreed with them that appellant had no factors of disability, as appellant clearly described subjective factors of disability and as both these doctors reported restricted cervical spine motion, an objective factor of disability. Dr. Khalsa also disagreed that appellant's CTS had resolved, explaining that he had a positive Tinel's sign and Phalen's testing as well as discomfort over the wrist, digit paresthesias upon percussion at the wrist, and hand paresthesias upon sustained flexion at the wrist.

By decision dated June 19, 2002, the Office terminated appellant's compensation, including his authorization for medical treatment, effective that date on the grounds that the weight of the medical evidence, represented by the reports of Dr. Schmitz, an impartial medical specialist resolving a conflict of medical opinion, established that he had no disability or residuals related to his employment injury.

By letter dated July 16, 2002, appellant's attorney requested a review of the written record. By decision dated September 30, 2002, an Office hearing representative found that the opinion of Dr. Schmitz represented the weight of the medical evidence and established that appellant's employment-related disability had ceased and that he had no objective of ongoing residuals. The Office hearing representative also found that Dr. Schmitz's recommendation of an ergonomic chair was made as a result of appellant's height, not because of his accepted conditions.

By letter dated April 28, 2003, appellant's attorney requested reconsideration, and submitted a March 24, 2003 report from Dr. Dilbagh S. Chattha, a neurologist, who reviewed the prior medical treatment and set forth appellant's history and symptoms of neck, hand and arm pain, and bilateral hand and forearm numbness, and tingling. Dr. Chattha stated that the normal EMG performed by Dr. Khalsa did not mean that appellant did not have CTS, and that an EMG and nerve conduction velocity (NCV) studies in his office showed a slightly prolonged right median sensory distal latency consistent with mild right CTS. On examination Dr. Chattha found mild cervical spine tenderness, cervical spine motion limited by pain and stiffness of the neck muscles, mildly positive Tinel's sign bilaterally, equivocal Phalen's sign, weakness of bilateral hand grip on the Jamar dynamometer, and normal sensory function and deep tendon reflexes. Dr. Chattha concluded that appellant's CTS had not resolved, as shown by the positive Tinel's sign and the mildly abnormal EMG, that the cervical spine tenderness and mild limitation to cervical spine motion meant that appellant had cervical sprain, and that there was a "very clear objective finding of minimal broad-based disc bulge at C4-5 and C6-7 level on the MRI [scan] films," which was causing his neck pain. Dr. Chattha diagnosed cervical sprain, thoracic sprain, and bilateral CTS, and recommended that appellant continue his modified job for four hours per day.

By decision dated July 24, 2003, the Office found the additional evidence insufficient to warrant modification of its prior decisions. The Office reissued this decision on September 2, 2003 as amended to correct typographical errors. By letter dated September 16, 2003, appellant's attorney requested reconsideration, and submitted the results of the EMG and NCV studies done by Dr. Chattha on March 24, 2003. By decision dated November 7, 2003, the Office found the additional evidence insufficient to warrant modification of its prior decisions.

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.¹ The right to medical benefits for an accepted condition is not limited to the period of entitlement to

¹ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

compensation for disability.² 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.³

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.⁴

ANALYSIS

There was a conflict of medical opinion in this case on the question of whether appellant's accepted conditions of cervical and thoracic strain and CTS had resolved. Appellant's attending Board-certified neurologist, Dr. Khalsa, maintained that these conditions persisted and resulted in work limitations. Dr. Sherman, the Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion, concluded that these conditions had resolved with no residual effects.

To resolve this conflict of medical opinion, the Office, pursuant to section 8123(a) of the Federal Employees' Compensation Act,⁵ referred appellant, the case record and a statement of accepted facts to Dr. Schmitz, a Board-certified orthopedic surgeon. The reports of Dr. Schmitz, which were based on an accurate history, concluded that appellant's employment-related conditions had resolved, and provided rationale for this opinion, citing the absence of objective findings on examination and on x-rays, MRI scan and EMG. The reports of Dr. Schmitz are sufficiently rationalized to constitute the weight of the medical evidence and establish that appellant had no residuals of his accepted employment-related conditions at the time of his examination of appellant on March 13, 2002. Dr. Schmitz attributed appellant's cervical x-ray and MRI scan findings to his age rather than to his accepted cervicothoracic strain. Given his conclusion that appellant had no residuals of the employment-related conditions, the recommendations by Dr. Schmitz of exercises, splints and an ergonomic chair are consistent with prevention of future injury, which is not compensable.⁶

The May 23, 2002 report of Dr. Khalsa that appellant submitted in response to the Office's proposed termination of his compensation is not sufficient to overcome the special weight accorded the reports of Dr. Schmitz or to create a new conflict of medical opinion. While Dr. Khalsa expressed his disagreement with the conclusions of Drs. Sherman and Schmitz in the

² *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

³ *Furman G. Peake*, 41 ECAB 361 (1990).

⁴ *James P. Roberts*, 31 ECAB 1010 (1980).

⁵ 5 U.S.C. § 8123(a) states in pertinent part: "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."

⁶ *Manuel Gill*, 52 ECAB 282 (2001).

May 23, 2002 report, it otherwise was essentially similar to his prior reports that created the conflict of medical opinion.⁷

The March 24, 2003 report of Dr. Chattha is also insufficient to overcome the weight of the reports of Dr. Schmitz or to create a new conflict of medical opinion. Dr. Chattha attributed appellant's neck pain to the disc bulges seen on an MRI scan, but these bulges are not an accepted condition. Dr. Chattha also stated that appellant's tenderness and mild limitation of motion of the cervical spine meant that appellant had cervical sprain, but did not explain why these findings were indicative of cervical sprain rather than caused by the disc bulges. Regarding appellant's CTS, Dr. Chattha stated that the normal EMG done by Dr. Khalsa did not mean that appellant did not have CTS, but the Board has held that the absence of objective findings of disability is more compatible with an absence of disability than with its presence.⁸ Dr. Chattha performed NCV studies on March 24, 2003 and found they showed a slightly delayed right median sensory distal latency consistent with mild right CTS, but this does not support the doctor's conclusion that appellant still had bilateral CTS. Dr. Chattha also did not discuss the relevance of the equivocal Phalen's sign, focusing instead on only the mildly positive Tinel's sign. Dr. Chattha also did not discuss the relevance of the negative findings on examination of appellant's wrists of Drs. Sherman and Schmitz, and moreover, did not provide any explanation of how any of the findings on examination on March 24, 2003 were related to appellant's employment.

CONCLUSION

The weight of the medical evidence, represented by the reports of Dr. Schmitz, a Board-certified orthopedic surgeon resolving a conflict of medical opinion, establishes that appellant no longer had residuals of his employment-related conditions by June 19, 2002.

⁷ See *Dorothy Sidwell*, 41 ECAB 857 (1990) (a report of a physician on one side of a conflict of medical opinion was found insufficient to overcome the weight of the report of the impartial medical specialist resolving the conflict, or to create a new conflict with it).

⁸ *Anna Chrun*, 33 ECAB 829 (1982).

ORDER

IT IS HEREBY ORDERED THAT the November 7 and September 2, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 5, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member