



Appellant stopped work on February 7, 2000 and has not returned. Appellant later received a disability retirement.

In April 2000, Dr. Bruce Northrup, an osteopath and Board-certified neurologist, began treating appellant for complaints of persistent back pain. In an April 3, 2000 report, Dr. Northrup discussed that appellant had a large synovial cyst with substantial enlargement of the joint at L4-5, preponderantly on the left side, demonstrated by magnetic resonance imaging (MRI) scan and recommended that appellant undergo surgery to correct the synovial cyst. An August 11, 1999 MRI scan revealed bulging of the disc and posterior spondylosis at T11-12, T12-L1 and L1-2; a small component of the central canal stenosis at L4-5 with a synovial cyst of the right facet joints and bilateral neural foraminal degenerative narrowing and left greater than right neural foraminal narrowing at L5-S1. A February 16, 2000 MRI scan revealed lumbar spondylosis, degenerative disc disease from T10 through L2, hypertrophic facet disease from L2 through L5, a synovial cyst, central canal stenosis and bilateral apophyseal joint effusion.

Appellant was referred to Dr. Steven Valentino, an osteopath and Board-certified orthopedic surgeon, for a second opinion. In a report dated May 24, 2000, Dr. Valentino discussed that appellant had a work-related fall on January 31, 2000 and findings were consistent with lumbar strain. He related that appellant previously sustained numerous low back injuries including a 1986 work-related back injury which disabled her for six months, a 1993 low back injury which disabled her for several months, another work-related back injury on September 29, 1994 and a nonwork-related automobile accident in July 1999 which caused injury to her neck and back. Dr. Valentino concluded that, based on his evaluation, which included appellant's comprehensive history, orthopedic, neurologic and spinal examination, she sustained a lumbosacral sprain causally connected to the January 31, 2000 accident; however, she had recovered from the lumbosacral sprain without residual and impairment. He further indicated that appellant's preexistent history of lumbar stenosis and L4-5 synovial cysts, noted in the August 11, 1999 MRI scan, clearly predated the January 31, 2000 employment injury and that those conditions were not aggravated, precipitated or accelerated by the employment injury, as the February 16, 2000 MRI scan revealed no significant difference. Dr. Valentino went on to state that an electromyography report dated March 1, 2000 did not find any evidence of an L4-5 radiculopathy, offering further evidence that the condition at L4 was not affected by the January 31, 2000 employment injury.

On June 26, 2000 the Office issued a notice of proposed termination based on Dr. Valentino's May 24, 2000 report. Dr. Northrup subsequently submitted a report dated July 11, 2000 in which he disagreed with Dr. Valentino's findings. He indicated that the January 31, 2000 employment-related fall clearly exacerbated appellant's persistent condition. On August 31, 2000 the Office advised appellant that a conflict of medical opinion existed in her case, which required resolution by an impartial medical specialist.

The Office referred appellant to Dr. Frank Mattei, a Board-certified orthopedic surgeon, to resolve the conflict. Dr. Mattei submitted an October 9, 2000 report in which he concluded that appellant's current conditions were preexisting and opined however that such conditions might have been temporarily exacerbated by her fall. He further stated that the surgery which removed appellant's synovial cyst was precipitated by the preexisting condition.

In a report dated October 27, 2000, Dr. Northrup stated that, immediately following the fall, appellant related she developed strong pains in the left leg with substantial numbness of the left leg, which persisted and eventually caused her to have a lumbar laminectomy with excision of a synovial cyst affecting the nerves to her left leg. He stated further “the initial scan before the fall showed a small right-sided cyst and the scan following the fall showed a huge left-sided cyst.” Dr. Northrup related appellant’s back pain to “a slippage which has occurred between the fourth and fifth lumbar vertebrae.” He concluded: “It seems intuitive to me that the left-sided cyst produced left leg symptoms immediately following the fall. This cyst was visualized on the MRI scan following the fall and was the agent which produced her disability. This fall either produced the cystic condition or worsened it on the left.” Dr. Northrup performed a lumbar laminectomy on July 18, 2000.

The Office thereafter requested an addendum report from Dr. Mattei on the pending issues in this claim; however, Dr. Mattei did not submit a supplemental report.

In April 2001 the Office determined that a conflict of medical evidence still existed and referred appellant to Dr. William Emper, a Board-certified orthopedic surgeon, selected as the impartial medical specialist. In an April 10, 2001 letter, the Office inquired whether there was a preexisting synovial cyst aggravated by the work injury and whether the aggravation ceased when the cysts were excised. The Office also inquired whether the fall caused the cyst to move from the right to the left side and grow as Dr. Northrup had indicated or whether appellant had more than one cyst by the time he began treating her. The Office further inquired whether any of her current complaints were due to the January 31, 2000 fall and whether the lumbar discectomy and fusion of L4-5 performed on February 13, 2001 was due to the work injury or due to her preexisting degenerative disc disease and synovial cyst diagnosed on August 11, 1999.

In the interim, the Office received an April 16, 2001 medical report from Dr. Robert A. Smith, attending physician, which advised that appellant continued to be totally disabled due to a second major surgery for a lumbar discectomy and fusion of L4-5 performed February 13, 2001. Dr. Smith related the surgical procedure to the January 31, 2000 employment injury. The Office received a CA-20 form from Dr. Smith which noted that appellant was partially disabled from November 11, 2000 through March 13, 2001 as a result of the January 31, 2000 employment injury and totally disabled at that time related to her second surgery on February 13, 2001.

Dr. Emper submitted a May 7, 2001 report which evaluated the extent of appellant’s injuries as a result of her January 31, 2000 slip and fall. Dr. Emper reviewed appellant’s employment and medical history including her prior back injuries and diagnoses, her current symptoms and x-rays and MRI scan reports from September 1997 to September 21, 2000. Dr. Emper concluded that appellant had a preexisting condition in her lumbar spine consistent with degenerative arthritis and degenerative disc disease as well as a synovial cyst at L4-5. He opined that the slip and fall on January 31, 2000 did not cause the condition, but that it was preexistent. Dr. Emper further opined that appellant sustained a lumbar sprain at the time of her slip and fall and did not exacerbate her preexistent condition of degenerative arthritis. He stated:

“Her condition is a degenerative problem and was not caused by the slip and fall on [January] 31, [20]00. The MRI scan in 1999 clearly documents degenerative dis[c] disease as well as degenerative arthritis and an L4-5 synovial cyst. The

cyst and the degenerative dis[c] disease were present prior to her slip and fall in [January] [20]00. The surgery which primarily dealt with the level L4-5 for decompression and subsequent fusion was secondary to her degenerative condition and not secondary to the slip and fall in [January] [20]00. Therefore, in my opinion, [appellant] has no disability as a result of her slip and fall in [January] [20]00. It is my opinion that her disability is secondary to her preexistent degenerative dis[c] disease.”

By decision dated July 18, 2001, the Office terminated compensation benefits based on Dr. Emper’s findings that appellant had recovered from the January 31, 2000 employment injury. On July 23, 2001 appellant, through counsel, requested an oral hearing and submitted an August 15, 2001 medical report from Dr. Bruce Grossinger, an osteopath and Board-certified neurologist, who evaluated appellant in a neurological follow up and electromyography (EMG) consultation. Dr. Grossinger stated that appellant’s EMG study clearly noted a mild but definite left L5 radiculopathy which was expressed in the EMG as chronic denervation with reinnervation in the left L5 myotomal distribution. He indicated that appellant’s injuries continued to be related to the January 31, 2000 slip and fall and deemed permanent.

On December 12, 2001 an Office hearing representative determined that the case was not in posture for a hearing and vacated the July 18, 2001 decision. The Office hearing representative found that the notice of proposed termination released June 26, 2000 was premature and incorrect, therefore, rendering it invalid. The Office hearing representative however found that the final decision issued July 18, 2001 may be used as the notice of proposed termination of benefits and advised appellant that she had 30 days from the date of the remand order to respond to the proposed action.

In a letter dated December 27, 2001, appellant’s counsel argued that Dr. Emper’s report failed to provide medical reasons for his conclusion that appellant neither suffered an aggravation of her preexisting back condition nor suffered an injury on January 31, 2000 and could not carry the weight of the medical evidence. Appellant’s counsel also resubmitted the August 15, 2001 report from Dr. Grossinger and results of the August 15, 2001 EMG study. Appellant’s counsel also submitted an October 31, 2001 report from Dr. Grossinger which noted that appellant continued to complain of pain and numbness in the hands which he stated was “referable to her cumulative activities at the [employing establishment].” Dr. Grossinger noted that appellant underwent two surgeries on July 18, 2000 and in February 2001 and had evidence of failed surgical low back syndrome “relating to the slip and fall.”

On February 8, 2002 appellant’s counsel submitted an addendum report dated February 2, 2002 from Dr. Grossinger and maintained that appellant still suffered from the residuals of her January 31, 2000 work injury. Dr. Grossinger indicated that he reviewed the opinions of Dr. Robert Smith and Dr. Emper and indicated that he strongly disagreed with Dr. Emper’s opinion for many reasons. He stated:

“Firstly, the patient had fully recovered from a 1999 car accident. She was able to work in a free and agile fashion at the [employing establishment] prior to her January 2000 accident.... If indeed she suffers from osteoarthritis and a degenerative condition, she would have had some residual symptoms and would

not have elected to obtain the position as a maintenance specialist for [the employing establishment]. She was also able to jog on a daily basis prior to her stated work accident. If indeed, she suffered from a degenerative condition, this would have precluded her from jogging and performing other active endeavors.... Dr. Emper's opinion is overly simplistic and not based on medical fact. Further, Dr. Northrup, himself, is in the best position to comment on causality, as he operated on her spine.... Dr. Northrup, Dr. Smith and I have all concluded that her ... [work] accident was the compelling cause of her lumbar condition, her neck condition and the proximal cause of her surgery.”

By decision dated February 28, 2002, the Office finalized the July 18, 2000 notice of proposed termination of benefits for the reason that the weight of medical evidence established that appellant had no continual residual disability and medical condition causally related to the January 31, 2000 work injury.

On March 13, 2002 appellant's counsel submitted a report from Dr. Alexander Vaccaro, a Board-certified orthopedic surgeon, dated February 27, 2002 in support of the claim for continuing compensation benefits. Dr. Vaccaro noted that appellant was originally seen in his office on November 8, 2000 with a chief complaint of low back, bilateral buttock pain, posterolateral thigh pain and right calf discomfort and was post status the July 14, 1999 motor vehicle accident. He related that appellant was doing extremely well since her motor vehicle accident until January 31, 2000 when she slipped on ice and twisted her back and had an exacerbation of her discomfort eventually necessitating surgical intervention. The Office received subsequent reports from Dr. Grossinger which indicated that appellant's disability was ongoing.

On February 25, 2003 appellant's counsel requested an oral hearing, which was held on October 27, 2003. By decision dated January 29, 2004, an Office hearing representative found that the Office met its burden of proof in establishing that appellant had no residual disability causally related to the accepted work injury. The Office hearing representative found that, while appellant's physicians opined that her condition was still work related, their opinions were based on appellant's assertions that she was asymptomatic prior to January 2000 which is insufficient to carry the weight of the medical evidence. The Office hearing representative noted that Dr. Emper reviewed appellant's medical records, radiology reports and completed an examination of appellant and that his report carried the weight of the medical evidence. The Office hearing representative relied on Dr. Emper's conclusion that appellant's disability and surgical procedures were not related to the January 2000 work incident but to preexisting conditions and that such preexisting conditions were not exacerbated by the slip and fall. The Office hearing representative affirmed the prior decision.

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>2</sup> After it has determined that an employee has a

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<sup>2</sup> *Harold McGough*, 36 ECAB 332 (1984).

disabling condition causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.<sup>3</sup>

### ANALYSIS

The Office found that the weight of the medical evidence rested with the opinion of Dr. Emper, a Board-certified orthopedic surgeon, that appellant's persistent lumbar condition, surgical procedures and resultant disability were not related to the January 2000 work incident but to preexisting conditions which were also not exacerbated by the employment injury. In April 2001, the Office advised Dr. Emper that appellant's claim had been accepted for lumbar strain and enclosed appellant's medical history, a statement of accepted facts and a list of specific questions. The Office requested that he conduct a complete examination of appellant, obtain a history from appellant and provide a medical opinion with respect to the specific questions posed. Prior to Dr. Emper's review of the case, the medical evidence of record demonstrated that, prior to the January 31, 2000 employment injury, appellant had a synovial cyst on the right and that following the employment injury appellant had developed a large cyst on the left. Appellant's counsel submitted an October 27, 2000 report from Dr. Northrup, appellant's treating physician who performed her lumbar laminectomy on July 18, 2000, who stated his belief that the left-sided cyst produced left leg symptoms following the fall, and that the fall either produced the cystic condition or worsened it on the left. The Office requested that Dr. Emper address the questions prompted by Dr. Northrup's October 27, 2000 report; specifically whether there was a preexisting synovial cyst aggravated by the work injury and whether the fall caused the cyst to move from the right to the left side and grow, or whether she had more than one cyst and the time he treated her. The Office also requested that Dr. Emper determine whether the surgeries performed were due to the work injury or appellant's preexisting degenerative disc disease and synovial cyst diagnosed on August 11, 1999.

In his report, Dr. Emper concluded that appellant had a preexisting condition in her lumbar spine consistent with degenerative arthritis and degenerative disc disease as well as a synovial cyst at L4-5, which were not caused by the January 31, 2000 slip and fall. Dr. Emper opined that, while appellant sustained a slip and fall at that time, the incident did not exacerbate her preexistent condition of degenerative arthritis. He noted the 1999 MRI scan clearly documents the degenerative disc disease, degenerative arthritis and L4-5 synovial cyst which made it present prior to the fall and the surgery which primarily dealt with the level L4-5 decompression was secondary to the degenerative condition and not the fall. Dr. Emper reiterated that appellant's current condition and disability was secondary to her preexistent degenerative disc disease.

The Board has carefully reviewed the opinion of Dr. Emper and finds that the physician provided a well-reasoned opinion concerning the relationship of appellant's diagnosed synovial cysts and lumbar surgeries and the January 31, 2000 employment injury. The Office correctly found that the weight of the medical evidence rested with the independent medical opinion of

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<sup>3</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1929).

Dr. Emper as it was sufficiently probative, rationalized and based upon a proper factual background.

Dr. Emper sufficiently explained that appellant had the synovial cyst prior to the employment injury and concluded that the lumbar sprain sustained at the time of the slip and fall did not exacerbate the cyst. Furthermore, he indicated that appellant's surgery primarily dealt with the level L4-5 for decompression and subsequent fusion, which was secondary to appellant's degenerative condition. The Board finds that the Office acted correctly in according the opinion of Dr. Emper the special weight of an impartial medical examiner and terminated appellant's benefits effective July 18, 2001.

Although appellant continued to submit reports from her treating physicians, Drs. Grossinger and Vaccaro who opined that appellant's current conditions were not preexisting; unlike Dr. Emper these doctors did not address the x-ray and MRI reports which were prepared prior to the employment injury of January 31, 2000 work injury to support their conclusions regarding appellant's current conditions. Although appellant's treating physicians opined that appellant's synovial cyst and degenerative disc disease were not preexisting, they offered no rationalized medical opinion based upon the objective medical evidence of record. The opinions of appellant's treating physicians therefore are not sufficient to overcome the weight of the impartial medical specialist's report.

#### **CONCLUSION**

The Board finds that the Office met its burden of proof in terminating appellant's entitlement to benefits.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 29, 2004 is affirmed.

Issued: September 16, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member