



mail carrier. The Office accepted her claim for a left shoulder strain on October 2, 1996. Appellant underwent cervical disc surgery on March 18, 1999.

Appellant filed a claim for occupational disease on January 4, 2001 alleging that she had developed cervical disc disease due to her duties as a dispatch clerk. The Office accepted her claim for temporary aggravation of preexisting degenerative disc disease on January 25, 2001. Appellant stopped work on March 21, 2001. Appellant's attending physician, Dr. Andrew S. Zelby, a Board-certified neurosurgeon of professorial rank, recommended additional surgery.

The Office referred appellant for a second opinion evaluation with Dr. Richard H. Sidell, Jr., a Board-certified orthopedic surgeon, on June 11, 2001. In a report dated June 29, 2001, Dr. Sidell opined that appellant's diagnosed condition of cervical spondylosis with spinal stenosis was not directly medically connected to her work injuries. He stated that the injuries which occurred at work were simply temporary aggravations of her preexisting condition which occurred only on the days at work when she was having pain. Dr. Sidell concluded, "I do not feel that the work itself or any injuries at work are in any way contributing to the underlying conditions."

On August 8, 2001 the Office requested a supplemental report from Dr. Sidell. In a report dated August 17, 2001, Dr. Sidell stated that no injury occurred while appellant was working and that she experienced discomfort at work simply because she had a preexisting condition, which manifested itself on a daily basis. He stated that the activities of work did not contribute in any way to appellant's symptoms or to the need for further treatment. Dr. Sidell stated, "I think that it would be best therefore to conclude that this did not represent a temporary aggravation on a daily basis but rather a preexisting condition that was symptomatic."

The Office entered appellant on the periodic rolls on July 26, 2001. Appellant underwent additional cervical spine surgery on October 2001.

The Office determined that there was a conflict of medical opinion evidence between Dr. Sidell and Dr. Zelby regarding the need for additional medical treatment and the causal relationship between appellant's current condition and her accepted employment injury. On October 16, 2001 the Office referred appellant to Dr. Kevin F. Walsh, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated November 20, 2001, Dr. Walsh stated that appellant was currently a C5 quadriplegic and had findings consistent with that diagnosis. He opined that appellant's condition was permanent and that she was totally disabled. Dr. Walsh stated that it was unlikely that appellant's work caused the degenerative changes in the cervical spine and that it was not likely that the work aggravated or accelerated the degenerative changes in her cervical spine. He stated:

"If indeed the patient's work was aggravating her symptoms, more likely that not, her symptoms would have improved when she was off of work from March 2001 until the time of her surgery. Unfortunately, her symptoms worsened during this period of time consistent with the diagnosis of a degenerative condition. I do not believe that the patient's work aggravated her preexisting condition."

In a letter dated December 28, 2001, the Office proposed to terminate appellant's compensation benefits. Appellant disagreed with this proposed termination on January 16, 2002. By decision dated January 30, 2002, the Office terminated appellant's compensation and medical benefits effective January 30, 2002. The Office also denied payment for appellant's October 2001 cervical spine surgery.

Appellant requested an oral hearing on February 2, 2002. She submitted a report from Dr. Zelby dated January 28, 2002 in which he noted appellant's history of injury and medical treatment. Dr. Zelby noted that appellant had an underlying degenerative condition of her cervical spine, however, he further found that she began to experience symptoms in December 2000 and continued to work through March 2001. He stated, "I think that it is the patient's work activity and the aggravation from the activities that lead to her increase in symptoms and ultimately the surgery for which she had underwent."

Appellant's representative appeared and her husband testified at the oral hearing on July 23, 2002. By decision dated November 8, 2002, the hearing representative affirmed the Office's January 30, 2002 decision. The hearing representative found that Dr. Walsh's report was entitled to the weight of the medical evidence and established that appellant's current conditions and disability were not related to her employment.

Appellant requested reconsideration on September 17, 2003 and requested a schedule award on September 18, 2003. In a report dated August 26, 2003, Dr. D.A. Minnis, a chiropractor, reviewed appellant's medical records but did not personally examine her. He opined that appellant's repetitive work movements caused her ongoing pain and resulted in an aggravation of her underlying condition. Dr. Minnis provided a permanent impairment rating but did not diagnose a subluxation of the spine based on x-rays.

By decision dated September 30, 2003, the Office considered appellant's claim on the merits and determined that the evidence submitted was not sufficient to warrant modification of its prior decisions. The Office noted that Dr. Minnis was not a physician for the purposes of the Federal Employees' Compensation Act.<sup>1</sup> Consequentially, his report could not constitute medical evidence.<sup>2</sup>

Appellant again requested reconsideration on June 18, 2004. She disagreed with the findings of Drs. Sidell and Walsh and argued that her current condition was due to her employment.

Appellant also resubmitted Dr. Minnis' August 26, 2003 report with additional signatures from Dr. Lafayette Singleton, a Board-certified neurologist; Dr. Shahid A. Ansari, a Board-certified general surgeon and Dr. Robert James Fink, a Board-certified orthopedic surgeon.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193, § 8101(2). The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. 5 U.S.C. § 8101(2).

<sup>2</sup> It is well established that, to constitute competent medical opinion evidence, the medical evidence submitted must be signed by a qualified physician. *Vickey C. Randall*, 51 ECAB 357, 360 (2000); *Arnold A. Alley*, 44 ECAB 912, 921 (1993). *Merton J. Sils*, 39 ECAB 572, 575(1988).

Dr. Minnis stated, and the other physicians adopted, that the injury at work with repetitive movements of the right and left upper extremities and neck caused the osteophytes in appellant's neck to protrude into the soft tissues of the surrounding area which could include the foraminal spaces, nerve tissues and muscle tissues to cause ongoing pain, which resulted in the need for her second cervical surgery. The report stated that appellant's current condition was a consequential injury of her accepted work-related condition. Appellant also submitted a report dated May 17, 2004 written by Dr. Minnis and also signed by Drs. Ansari and Singleton, stating that Dr. Minnis' previous report was based on a fair and intensive review of the record.

In a report dated June 14, 2004, Dr. Fink stated that he had reviewed Dr. Minnis' report was in full agreement with her impairment rating. He diagnosed C5 quadriplegia from cortical spinal injury.

By decision dated July 7, 2004, the Office declined to reopen appellant's claim for consideration of the merits finding that she failed to raise substantive legal questions and that although she submitted new medical evidence, this evidence was not relevant as it did not discuss the ongoing causal relationship between appellant's condition and her employment. The Office found that evidence regarding appellant's impairment rating was not relevant as her condition leading to the impairment rating was not employment related.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>3</sup> the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously consideration by the Office.<sup>4</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>5</sup>

### **ANALYSIS**

Appellant disagreed with the conclusions reached by Drs. Sidell and Walsh and argued that Dr. Zelby's reports were sufficient to establish her claim. This is not a new legal argument. Appellant previously disagreed with the Office's legal finding on the weight of the medical evidence in terminating her compensation benefits. As this legal argument was previously made before the Office hearing representative, it is not a new legal argument and the Board finds that this is not a basis for reopening appellant's claim for consideration of the merits.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193, § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> 20 C.F.R. § 10.608(b).

Appellant submitted additional medical evidence addressing the extent of her permanent impairment. Dr. Fink, a Board-certified orthopedic surgeon, on June 14, 2004, diagnosed C5 quadriplegia from cortical spine injury and agreed with Dr. Minnis regarding the extent of her permanent impairment. Although the new medical evidence suggests that appellant currently has permanent impairment due to her diagnosed condition of C5 quadriplegia, medical evidence regarding the extent of her permanent impairment cannot establish that that impairment was due to her accepted work-related condition of temporary aggravation of preexisting degenerative disc disease.

The report dated August 26, 2003, written by Dr. Minnis, a chiropractor and adopted by the additional signatures of Dr. Singleton, a Board-certified neurologist; Dr. Ansari, a Board-certified general surgeon and Dr. Fink, however, is now medical evidence<sup>6</sup> and is relevant to the central issue in this case, whether appellant's current condition is causally related to her accepted employment injury. Dr. Minnis stated, and the other physicians adopted, that the injury at work with her repetitive movements of the right and left upper extremities and neck caused the osteophytes in her neck to protrude into the soft tissues of the surrounding area which could include the foraminal spaces, nerve tissues and muscle tissues to cause ongoing pain, which resulted in the need for her second cervical surgery. The report stated that her current condition was a consequential injury of her accepted work-related condition. This medical evidence addresses whether appellant has a continuing condition resulting from her accepted employment injury and is relevant to the issue of whether the Office properly terminated her compensation benefits on the grounds that her employment-related temporary aggravation of preexisting degenerative disc disease had ceased.

### CONCLUSION

The Board finds that appellant submitted relevant new medical evidence with her June 18, 2004 request for reconsideration which required the Office to reopen her claim for consideration of the merits.

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<sup>6</sup> See *Vickey C. Randall and Arnold A. Alley, supra* note 2.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated July 7, 2004 is set aside and remanded for further action consistent with this decision of the Board.

Issued: April 15, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member