

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

PATRICIA SOBCZAK, Appellant

and

**DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Bensalem, PA, Employer**

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**Docket No. 05-1339
Issued: December 19, 2005**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 7, 2005 appellant, through her attorney, filed a timely appeal of a merit decision of an Office of Workers' Compensation Programs' hearing representative dated January 14, 2005, which affirmed the termination of her medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly terminated appellant's medical benefits on the grounds that she no longer had any orthopedic residuals or disability causally related to her April 7, 1994 employment injury.

FACTUAL HISTORY

On April 12, 1994 appellant, then a 34-year-old data transcriber, filed a traumatic injury claim alleging that on April 7, 1994 she hurt her neck, right arm and lower back when a wall collapsed in a bathroom stall. The Office accepted her claim for acute cervical strain/radiculitis

and contusions of the right hand and arm. The Office paid appropriate compensation for temporary total disability.

By decision dated July 31, 1996, the Office terminated appellant's compensation. It found the evidence of record insufficient to establish that she had any continuing residuals or disability causally related to the April 7, 1994 employment-related injury. The Office accorded special weight to a May 25, 1995 impartial medical report of Dr. Bong S. Lee, a Board-certified orthopedic surgeon. He diagnosed chronic pain syndrome of the cervical and lumbar spines and right arm and opined that appellant no longer had any residuals or disability causally related to the accepted injury and that she could perform limited-duty work with certain restrictions.¹

On August 2, 1996 appellant requested an oral hearing before an Office hearing representative. In a November 18, 1996 decision, the hearing representative reversed the July 31, 1996 decision, finding that Dr. Lee's May 25, 1995 impartial medical report was insufficient to establish that appellant's employment-related residuals and disability had ceased. The hearing representative remanded the case to the Office for further development of the medical evidence.

In a January 8, 1997 letter, the Office requested that Dr. Lee provide a supplemental report which explained how his findings established a diagnosis of myofascial pain syndrome, whether the diagnosed condition was causally related to the April 7, 1994 employment injury and whether appellant had any residuals of the accepted employment injury that prevented her from performing the job she held at the time of injury. In a January 10, 1997 report, Dr. Lee stated that the diagnosis of myofascial pain syndrome was based on clinical findings with local tenderness and abnormal palpable tone of the muscles and tendons. He stated that the diagnosed condition could be caused by trauma to a certain part of the body as described by appellant and that she was partially disabled based on her subjective complaints at the time of examination. He reiterated that appellant could perform modified work with certain restrictions.

The Office expanded the acceptance of appellant's claim to include chronic pain syndrome, depression, myofascial pain syndrome and post-traumatic stress disorder.

The Office received an October 27, 1998 report from Dr. Kaplan, who indicated that physical therapy would be administered for appellant's cervical and lumbar radiculopathy. Dr. Kaplan noted that she was undergoing a combination of traditional physical therapy modalities such as heat, cold and electrical stimulation, participated in an exercise program and received acupuncture.

By letter dated April 22, 1999, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions, to Dr. Frank A. Mattei, a Board-certified orthopedic surgeon, for a second opinion medical examination. He submitted a May 5, 1999 report in which he reviewed appellant's medical records and factual background and listed

¹ Dr. Lee was selected by the Office to resolve a conflict in the medical opinion evidence between Dr. Richard H. Kaplan, appellant's treating Board-certified psychiatrist and Dr. Leonard B. Kamen, an Office referral physician, regarding the issue of whether appellant had any continuing residuals or disability causally related to the April 7, 1994 employment injury.

findings on orthopedic evaluation. He noted that appellant's emotional overlay affected the examination. Dr. Mattei could not elicit any evidence of radiculopathy of the upper or lower extremities. He noted that appellant was performing active physiotherapy, but he could not establish a true orthopedic diagnosis. Dr. Mattei opined that physical therapy was not beneficial to appellant and that he could not comment on her current program of acupuncture. He further opined that no orthopedic or physical limitations resulting from the April 7, 1994 employment injury could be established. Dr. Mattei concluded that, based on his objective orthopedic evaluation, he could not elicit any evidence to support appellant's constant and subjective complaints.

The Office found that a conflict in the medical opinion evidence arose between Dr. Kaplan and Dr. Mattei regarding the issue of whether appellant had any continuing residuals or disability causally related to her April 7, 1994 employment injury. By letter dated August 9, 1999, the Office referred her, together with a statement of accepted facts, the case record and a list of questions, to Dr. John T. Williams, a Board-certified orthopedic surgeon, for an impartial medical examination.

In an October 21, 1999 report, Dr. Williams opined that appellant had fully recovered from her accepted employment injury and that she was able to resume her normal preaccident activities and work duties without any physical restrictions. In an addendum, he indicated that he reviewed additional reports submitted to him by the Office. Dr. Williams stated that there was nothing to alter his opinion. He noted that the most important contributing factor towards arriving at a diagnosis was the history, which described the mechanism of injury and appellant's symptomatology in proximity to the incident. Dr. Williams opined that appellant's history of injury did not correlate with her symptomatology. He noted that a magnetic resonance imaging (MRI) scan and x-rays of her neck, hands and arm were negative. There were no positive objective findings on physical examination to correlate with her complaints. In the absence of the same, Dr. Williams concluded that appellant was fully recovered and was able to resume her normal preaccident activities and duties without any restrictions.

The Office received Dr. Kaplan's October 21, 1999 report, which noted appellant's complaints of neck and back pain with tingling and paresthesias in the hands. Dr. Kaplan further noted her treatment plan which included medication, acupuncture and physical therapy.

By letter dated July 28, 2000, the Office issued a notice of proposed termination of compensation for appellant's accepted orthopedic conditions, based on Dr. Williams' October 21, 1999 impartial medical report. The Office provided 30 days in which appellant could respond to this notice.

In an August 8, 2000 letter, appellant's attorney argued that the statement of accepted facts prepared by the Office did not include the accepted condition of myofascial pain syndrome and that any reports generated as a result were based on an inaccurate factual history. Counsel further argued that Dr. Williams' impartial medical report was deficient as the physician failed to discuss all of the relevant medical evidence or provide medical rationale to support his conclusion that residuals of her accepted employment injury had ceased.

By letter dated August 22, 2000, the Office advised Dr. Mattei that the condition of myofascial pain syndrome had been accepted and that it should have been included in the statement of accepted facts. It requested a supplemental opinion regarding appellant's continuing residuals of this accepted condition. On October 23, 2000 the Office was advised that Dr. Mattei was not available.

On March 22, 2001 the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions, to Dr. Anthony W. Salem, a Board-certified orthopedic surgeon, for a second opinion medical examination. He submitted an April 20, 2001 report, which provided a history of appellant's April 7, 1994 employment injury and medical and social background. Dr. Salem reported essentially normal findings on physical and x-ray examination of the lumbar and cervical spines. He noted that appellant's conditions should have resolved within six to eight weeks of the accepted injury. Dr. Salem stated that appellant's emotional condition was not related to the accepted employment injury and attributed it to her lifestyle and general makeup. He indicated that acupuncture treatment since 1998 was totally inappropriate and nonproductive based on her bizarre behavior and marked illness behavior pattern. Dr. Salem did not believe that a diagnosis could be established except for secondary gain, illness behavior and possible underlying depression which were not employment related. Appellant's prognosis was guarded in that there was a tremendous psychic overlay with her husband playing into it and reinforcing her behavior. Dr. Salem stated that there was no need for any type of continued medical treatment. He opined that appellant's physical limitations were not due to the accepted injury and that she had no employment-related disability. She could return to work as a data transcriber with no restrictions. Dr. Salem concluded that appellant did not continue to suffer any residuals of her accepted employment injury based on objective test results.

The Office found a conflict in the medical opinion evidence arose between Dr. Kaplan and Dr. Salem regarding the issue of whether appellant had any continuing residuals or disability causally related to her April 7, 1994 employment injury. By letter dated August 1, 2001, the Office, referred appellant, together with a statement of accepted facts,² the case record and a list of questions to Dr. Barry J. Snyder, a Board-certified orthopedic surgeon, for an impartial medical examination.

In an April 16, 2002 report, Dr. Snyder described the April 7, 1994 employment injury. He noted that appellant was seated on a toilet in a restroom at work when a partition struck her right arm, which caused her to fall. She complained of hardly having any feeling in her right arm over the years. Dr. Snyder reviewed the history of appellant's medical treatment and employment. On physical examination, he reported normal motor strength, sensation and reflexes in the upper and lower extremities, a negative Tinel's sign and pulses, straight leg raising that was limited by appellant's complaint of back pain, no deformity, circumference measurements for the upper and lower extremities and range of motions concerning the cervical, thoracic and lumbar spines. He also provided a detailed review of appellant's medical records.

² The Board notes that, on March 22, 2001, the Office amended the statement of accepted facts it sent to Dr. Snyder to reflect that appellant's claim had also been accepted for myofascial pain syndrome, post-traumatic stress disorder and dysthymic disorder.

Dr. Snyder stated that a diagnosis of disc herniation at L4-5 was not warranted as the annular bulge was considered to be a normal variant for a person of appellant's age. He noted that this condition was not associated with neural encroachment and there were no focal abnormalities. He stated that, absent any radiographic evidence of a neurologic impairment, the results of electrodiagnostic studies had questionable value. Dr. Snyder further stated that, despite the report of extensive areas of sensory loss and appellant's attempt to portray weakness by give-way resistance, there was no measurable atrophy, abnormal deep tendon reflexes, involuntary muscle spasms, sciatic tension signs and reported loss of mechanical stability of the spine or upper extremities. He noted that the "abnormalities" found on examination were entirely based on appellant's voluntarily demonstrated motion or subjective reports. In light of the relatively unremarkable radiographic findings, the limited lower back motion she demonstrated could not be physiologically explained. Dr. Snyder stated that more than three Waddell's signs was indicative of exaggeration or contrivance and noted that numerous signs were evident during appellant's examination. He indicated that fibromyalgia, which was raised by Dr. Kaplan as a possible diagnosis, was not established based on his examination. He discounted the opinion of appellant's treating physicians that she sustained an emotional condition resulting from the accepted employment injury because there was no physical basis upon which to draw such a conclusion. Dr. Snyder opined that, despite appellant's subjective complaints, there were no objective findings of the accepted employment injury and no need for continuing medical treatment or restriction of activities based on the physical and objective examination. He further stated that she did not sustain any employment-related impairment and that she could return to her data transcriber position, as well as, alternate positions.

By letter dated April 24, 2002, the Office issued a notice of proposed termination of compensation based on Dr. Snyder's April 16, 2002 medical report. The Office noted that the proposed termination did not relate to compensation benefits for appellant's employment-related emotional condition. The Office provided 30 days in which she could respond to this notice.

In a May 3, 2002 letter, appellant's attorney argued that Dr. Snyder's report was insufficient to terminate her compensation. He stated that Dr. Snyder failed to discuss a November 4, 1994 electromyogram (EMG) study, which found C5-6 right radiculopathy which had been accepted by the Office. Counsel requested that he discuss this evidence in light of his opinion that appellant was malingering.

By letter dated May 13, 2002, the Office noted that Dr. Snyder's April 16, 2002 report found that appellant had no residuals or objective findings which supported a diagnosis or continued residuals due to her accepted acute cervical strain/radiculitis and contusion of the right arm and hand. The Office requested that he provide a supplemental report.

In a June 11, 2002 report, Dr. Kaplan disagreed with Dr. Salem's April 20, 2001 report and Dr. Snyder's April 16, 2002 report. He contended that appellant had not recovered from her April 7, 1994 employment injuries and continued to experience chronic pain of a neuropathic nature based on documented cervical and lumbar radiculopathy. Dr. Kaplan further stated that she remained disabled from any and all employment and continued to require medical care. Dr. Kaplan concluded that appellant remained disabled as a result of her chronic work-related conditions.

By decision dated July 11, 2002, the Office terminated appellant's medical benefits regarding her accepted orthopedic conditions. It found the medical evidence of record established that she did not have continuing orthopedic residuals causally related to the April 7, 1994 injury and accorded special weight to Dr. Snyder's impartial medical report. The Office, however, noted that monetary and medical benefits for her emotional conditions would continue.

In a letter dated July 12 2002, appellant requested an oral hearing before an Office hearing representative.

In a July 3, 2002 supplemental report, Dr. Snyder advised the Office that he had reviewed the additional records, including the November 4, 1994 EMG study. He stated that he did not discuss the EMG results in his prior report because they were not included in the case record. Dr. Snyder explained that EMG testing was an interpretative study and a correlative diagnostic test and that interpretation of the test varied from one examiner to another. He stated that appellant had no focal neurologic findings for a diagnosis of radiculopathy. He further stated that the radiographic studies were unremarkable, an MRI scan was normal and, consequently, there was no basis for electrodiagnostic studies to be abnormal or demonstrate a diagnosis of radiculopathy. Dr. Snyder indicated that, aside from appellant's obvious symptom magnification or contrivance evident by her clinical presentation and examination, the distribution of her reported symptoms exceeded any semblance of involvement with the C5 distribution. Based on the additional evidence he reviewed, Dr. Snyder concluded that his prior opinions did not require modification.

By decision dated January 14, 2005, a hearing representative affirmed the Office's July 11, 2002 decision. The hearing representative found the evidence of record insufficient to establish that appellant had any continuing residuals or disability causally related to the April 7, 1994 employment injury. The hearing representative accorded special weight to Dr. Snyder's impartial medical report.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ If the Office, however, meets its burden of proof and properly terminates compensation, the burden for reinstating compensation benefits properly shifts to appellant.⁵ To prevail appellant must establish by the weight of the

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ *See Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

reliable, probative and substantial evidence that he or she had an employment-related disability, which continued after termination of compensation benefits.⁶

Section 8123(a) of the Federal Employees' Compensation Act provides: "[i]f 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."⁷ When a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸

ANALYSIS

The Board notes that a conflict in the medical opinion evidence was created between Dr. Kaplan, an attending physician and Dr. Salem, an Office referral physician, as to whether appellant had any continuing residuals or disability causally related to the April 7, 1994 employment-related orthopedic conditions of acute cervical strain/radiculitis, contusions of the right hand and arm, chronic pain syndrome and myofascial pain syndrome. Dr. Kaplan opined that she had continuing residuals of her accepted employment-related conditions and required medical treatment. Dr. Salem opined that appellant's employment-related injuries had resolved and that she could return to work as a data transcriber with no restrictions.

The Office referred appellant to Dr. Snyder, selected as the impartial medical specialist, who provided an accurate factual and medical background and conducted a thorough medical examination. He found no objective findings of the accepted employment-related orthopedic conditions. Dr. Snyder provided a detailed review of appellant's medical records. He opined that there was no objective evidence establishing that she had any residuals or disability causally related to her employment-related acute cervical strain/radiculitis and contusions of the right hand and arm. Dr. Snyder also opined that there was no need for continuing medical treatment or restriction of her activities and that she was capable of returning to her date-of-injury position. He noted in his supplemental report that the diagnostic studies were normal and did not substantiate a diagnosis of radiculopathy.

The Board finds that Dr. Snyder's opinion is entitled to special weight in finding that appellant no longer has any residuals or disability due to her April 7, 1994 employment injury as it is sufficiently rationalized and based on a proper factual and medical background.

On appeal appellant's attorney argues that Dr. Snyder's report establishes that she has residual disability causally related to the April 7, 1994 employment injury. Counsel stated that the report revealed loss of grip strength and atrophy in the right arm and noted that appellant is right-handed. He further stated that Dr. Snyder did not measure range of motion of the upper

⁶ *Talmadge Miller*, 47 ECAB 673, 679 (1996); see also *George Servetas*, 43 ECAB 424 (1992).

⁷ *Richard L. Rhodes*, 50 ECAB 259 (1999); *Noah Ooten*, 50 ECAB 283 (1999); *Rosita Mahana (Wayne Mahana)*, 50 ECAB 331(1999); *Richard Coonrad*, 50 ECAB 360(1999); *Gwendolyn Merriweather*, 50 ECAB 411 (1999); *Marsha R. Tison*, 50 ECAB 535(1999).

⁸ *James R. Driscoll*, 50 ECAB 146 (1998).

extremities. Dr. Snyder found that there were no objective findings to establish that appellant had any continuing residuals or disability causally related to the accepted employment injury. His opinion was sufficiently rationalized and based on a proper factual and medical background. As the Board has found that his opinion is entitled to special weight accorded an impartial medical specialist, counsel's argument is without merit.⁹

Counsel's contention that Dr. Snyder's impartial medical report is deficient because the statement of facts he relied upon did not include appellant's psychological conditions and myofascial pain syndrome is without merit. The record reveals that prior to referring appellant to Dr. Snyder the Office amended its statement of accepted facts to include myofascial pain syndrome, post-traumatic stress disorder and dysthymic disorder.

Counsel argues that, as an orthopedic surgeon, Dr. Snyder was not qualified to render an opinion on appellant's neurological and emotional conditions. Since appellant's claim involved an orthopedic component, it was reasonable to select a Board-certified orthopedic surgeon. Although Dr. Snyder addressed appellant's emotional condition, it is not at issue in the orthopedic claim. Appellant's attorney did not submit any evidence that Dr. Snyder was not qualified to assess the nature and extent of appellant's ongoing symptoms and her ability to work. Further, as found above, Dr. Snyder's impartial medical report was rationalized and based on an accurate factual and medical background. Therefore, his opinion is entitled to special weight accorded an impartial medical specialist.¹⁰

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation on the grounds that she no longer had any residuals or disability causally related to her April 7, 1994 employment injury.

⁹ *Id.*

¹⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board