



## **FACTUAL HISTORY**

On May 31, 2000 appellant, then a 38-year-old service representative, filed a claim for traumatic injury (CA-1), alleging that on May 24, 2000 she sustained injuries to her knees, left hand and arm and lower back when she fell to the floor while attempting to rise from her chair. The claim was accepted for lumbosacral, bilateral knee, left wrist and bilateral ankle sprains as well as tears bilaterally to the medial meniscus.

Appellant was initially treated by Dr. Alan Tiedrich, a Board-certified physiatrist, on June 5, 2000. She continued to see him and his colleague, Dr. Ellen S. Novick, a Board-certified physiatrist, from June 2000 through July 17, 2001.

Dr. Matthew Garfinkel, a Board-certified orthopedic surgeon, performed a right knee arthroscopy with partial medial meniscectomy on October 23, 2000 and a left knee arthroscopy with partial medial meniscectomy on January 3, 2001. In a follow-up report, he indicated that both knees were much improved from preoperative status and recommended three weeks of physical therapy to achieve optimal outcome. Dr. Garfinkel recommended “only deskwork at this time with no standing more than one hour total daily and no kneeling or bending if available.” In a February 20, 2001 report, he indicated that upon examination neither knee had alignment deformity, collateral ligament tenderness, medial or lateral joint line tenderness, pain with flexion and varus or flexion and valgus maneuver or lateral retinacular tightness. There was minimal swelling in the left knee and no obvious swelling or effusion in the right knee. Both extremities were fully neurovascularly intact. Dr. Garfinkel gave appellant a knee brace for comfort and support and recommended that she remain out of work. On March 13, 2001 he approved appellant’s returning to work “light duty with deskwork only.” On May 10, 2001 Dr. Garfinkel recommended a new left knee magnetic resonance imaging (MRI) scan, based on appellant’s continuing complaints of pain. On July 12, 2001 he reported that the MRI scan revealed no evidence of persisting or new meniscal tears, new torn cartilage or ligament or bone injury. Dr. Garfinkel stated his belief that appellant was at maximum medical improvement and could return to work “full duty with no restrictions.”

The record contains unsigned medical notes documenting numerous visits to Dr. Tiedrich and Dr. Ellen S. Novick, M.D. On March 6, 2001 Dr. Novick noted that appellant complained of pain in her left arm and knees but, that both knees had full range of motion. Subsequent treatment notes reflect that Dr. Novick informed her that she will probably always have knee pain but that “function is the goal.” She further stated that appellant would benefit from treatment at a fitness center to advance her exercise program. On September 6, 2001 Dr. Novick informed the Office of her recommendation that appellant obtain a fitness membership to increase her lower extremity strength, general conditioning and endurance. She further stated that appellant’s symptoms were suggestive of reflex sympathetic dystrophy in the left arm and patellofemoral pain in her lower extremities and recommended that appellant consult a pain specialist for further management and recommendations regarding the condition of her left upper limb.

The Office referred appellant to Dr. David Rubinfeld, a Board-certified orthopedic surgeon, for a second opinion examination, which occurred on August 31, 2001. On September 6, 2001 he opined in a six-page letter that appellant suffered no current disability

related to the accepted May 24, 2000 injury and that a full recovery had occurred. The results of his examination revealed normal gait; normal range of motion in appellant's shoulders, elbows, wrists, hands, ankles, cervical spine, thoracolumbar spine and knees; and normal motor strength in the deltoid, triceps, biceps, forearm muscles, hand musculature, quadriceps, hamstrings, calf muscles and extensor hallucis muscles bilaterally. Dr. Rubinfeld also reported that, upon examination of appellant's knees, there was no tenderness on palpation, no effusion, no instability and no ligamentous laxity. After having examined appellant and having reviewed the statement of accepted facts dated July 24, 2001 and all of the medical records provided to him by the Office, Dr. Rubinfeld stated that there was no objective evidence of an ongoing problem; that the date of injury condition had resolved as of August 1, 2001; that no additional medical treatment was indicated; and that appellant was able to perform her date-of-injury job with no restrictions.

On September 15, 2001 the Office issued a notice of proposed termination, which incorporated the notice of proposed decision, proposing that appellant's compensation for wage loss be terminated because the medical evidence established that residuals of the accepted injury had ceased. She was given 30 days to submit additional evidence. On November 6, 2001 appellant's attorney requested 30 additional days to submit additional medical evidence.

On November 29, 2001 the Office terminated appellant's compensation benefits effective December 1, 2001, finding that the weight of the medical evidence of record established that the accepted conditions had ceased no later than that date. She requested a hearing, which occurred on July 29, 2002.

At the hearing, appellant's representative argued that Dr. Rubinfeld's opinion should not carry the weight of the evidence because it was not rationalized and that all of his answers were "one-liners" with no supporting reasoning. He stated that, even if Dr. Rubinfeld's opinion was accepted as probative, a conflict existed, which warranted a referee examination. In support of his argument, the representative submitted into evidence a medical report dated July 16, 2002 signed by Dr. Novick who, based upon a recent patient examination and review of appellant's entire record, offered a final diagnosis for her of "chronic pain syndrome left upper limb, internal derangement of the bilateral knees status post arthroscopic surgery." She opined that appellant had suffered a permanent, significant limitation of the use of the left wrist and both knees and that the prognosis for the future was poor, since injuries of this type are frequent precursors to post-traumatic arthritis. Dr. Novick also opined that appellant's treatment was related to the incident of May 24, 2000; that she would continue to require further medical treatment for acute flare-ups and chronic sequelae of her injuries; and that, although appellant continued to complain of intermittent episodes of pain which impedes her performance of activities of daily living, she had achieved the maximum benefit to be derived from physical therapy.

Subsequent to the hearing, a medical report dated August 10, 2002 was provided by Dr. Garfinkel, wherein he stated that, in his medical opinion, appellant's injuries were related to the May 24, 2000 accident and were permanent in nature and that she could have some lingering inflammation in the knees despite having had surgery. He stated his final diagnosis to be right and left knee derangement.

On October 24, 2002 the hearing representative affirmed the Office's November 29, 2001 decision terminating appellant's benefits, finding that the medical evidence did not support any continuing condition based on any objective findings. He further found the weight of evidence to be in the opinion of Dr. Rubinfeld who opined that appellant's work-related condition had ceased.

On February 4, 2003 appellant, by counsel, requested reconsideration of the Office's decision. No response was received from the Office. On November 13, 2003 her representative again requested reconsideration. In support of the request, appellant submitted several documents, including a narrative report dated August 23, 2003 signed by Dr. James Chimente, a Board-certified neurologist, who treated her for neck pain, bilateral upper extremity numbness. Dr. Chimente's impression was spastic paraparesis, cervical myelopathy and herniated discs C3-4, C4-5. There was no discussion of appellant's accepted condition of lumbosacral, bilateral knee, left wrist and bilateral ankle sprains and tears bilaterally to the medial meniscus and no reference to her treatment by any other physician. Also submitted were notes referencing allergies, a rash and a damaged spinal cord; a pathology report; and two x-ray reports of appellant's spine.

On May 10, 2004 the Office denied modification of its October 24, 2002 decision.<sup>1</sup> The Office found that Dr. Chimente's report was based on an incomplete understanding of appellant's overall medical history and did not provide any reasoned medical explanation as to why her condition on the date of his examination was related to the May 24, 2000 injury. The Office also found that the report was insufficient to question the weight of the medical opinion evidence as contained in Dr. Rubinfeld's report.

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

Once the Office accepts a claim, it has the burden of proof to justify a termination or modification of compensation benefits.<sup>2</sup> After it has determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the accepted condition has ceased or that it is no longer related to the employment.<sup>3</sup>

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

Having accepted appellant's claim for lumbosacral, bilateral knee, left wrist and bilateral ankle sprains as well as tears bilaterally to the medial meniscus, the Office terminated her compensation benefits on the grounds that the residuals of the accepted injury had resolved. The

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<sup>1</sup> The Office noted that appellant's request for reconsideration was deemed to be timely filed in that the record contained a February 4, 2003 request for reconsideration to which the Office did not respond.

<sup>2</sup> *Willa M. Frazier*, 55 ECAB \_\_\_\_ (Docket No. 04-120, issued March 11, 2004); *see also Harold S. McGough*, 36 ECAB 332 (1984).

<sup>3</sup> *Willa M. Frazier*, *supra* note 2; *see also Vivien L. Minor*, 37 ECAB 541, 546 (1986).

Office, therefore, bears the burden of proof to justify a termination of benefits.<sup>4</sup> The Board finds that the Office met its burden of proof.

After her case was accepted, appellant was treated by several doctors. Dr. Garfinkel, who performed arthroscopic surgery on both knees, approved her return to “light duty” on March 13, 2001. On July 12, 2001 observing that a recent MRI scan revealed no evidence of meniscal tears, torn cartilage or ligament or bone injury, Dr. Garfinkel stated his belief that appellant was at maximum medical improvement and could return to work with no restrictions. On September 6, 2001 Dr. Novick stated that appellant’s symptoms were suggestive of reflex sympathetic dystrophy in the left arm and patellofemoral pain in her lower extremities and recommended that appellant consult a pain specialist for further management and recommendations regarding the condition of her left upper limb. She did not otherwise address the accepted conditions.

Dr. Rubinfeld, who performed the second opinion examination on August 31, 2001, opined that the date of injury condition had resolved, that no additional medical treatment was indicated and that appellant was able to perform her date of injury job with no restrictions. His report was based on a complete factual and medical background. Having identified the accepted condition, Dr. Rubinfeld reported that there was no objective evidence of an ongoing problem and that a full recovery had occurred. His six-page report provided details regarding appellant’s gait, range of motion and motor strength. Dr. Rubinfeld further commented on lack of tenderness, instability and ligamentous laxity in appellant’s knees. He referred to treatment by appellant’s former physicians and medical testing performed. Dr. Rubinfeld’s report was thorough. Although he did not discuss a time frame in which appellant’s condition would ordinarily resolve, his opinion that there were no objective findings that the accepted conditions were still active render such a discussion moot.

The Office based its proposed termination on Dr. Rubinfeld’s rationalized medical opinion. After appellant failed to submit any additional evidence in the 30 days provided, the Office finalized its proposed termination, stating that appellant had not submitted a current medical report with objective findings to support her claim of continued residuals related to the accepted condition. The Board finds that the Office properly terminated her compensation benefits.

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

Given that the Board has found that the Office properly relied upon the opinion of Dr. Rubinfeld in terminating compensation, the burden of proof shifts to appellant to establish that she remains entitled to compensation after that date.<sup>5</sup> To establish causal relationship between the claimed disability and the employment injury, she must submit rationalized medical

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<sup>4</sup> See *Willa M. Frazier*, *supra* note 2. See also *Manuel Gill*, 52 ECAB 282, 286 (2001). (The Office’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.)

<sup>5</sup> *Manuel Gill*, *supra* note 4; see also *George Sevetas*, 43 ECAB 424 (1992).

opinion evidence based on a complete factual and medical background supporting such a causal relationship.<sup>6</sup>

If there is disagreement between the physician making the examination for the Office and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>7</sup> Where 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 on a proper factual and medical background, must be given special weight.<sup>8</sup>

### ANALYSIS -- ISSUE 2

As of November 29, 2001, the date the Office terminated appellant's compensation benefits, Dr. Rubinfeld's report constituted the weight of the medical evidence and justified the Office's termination of benefits. Dr. Novick's July 16, 2002 report created a conflict in medical opinion which required the Office to refer the case to an impartial medical specialist for the purpose of resolving the conflict.<sup>9</sup> Based upon a recent patient examination, Dr. Novick provided a final diagnosis of "chronic pain syndrome left upper limb, internal derangement of the bilateral knees status post arthroscopic surgery." She opined that appellant had suffered a permanent, significant limitation of the use of the left wrist and both knees; that the prognosis for the future was poor, since injuries of this type are frequent precursors to post-traumatic arthritis; that appellant's treatment was related to the incident of May 24, 2000; and that she would continue to require further medical treatment for acute flare-ups and chronic sequelae of her injuries. Dr. Novick also stated her belief that, although appellant continued to complain of intermittent episodes of pain which impeded her performance of activities of daily living, she had achieved the maximum benefit to be derived from physical therapy.

Additionally, in an August 10, 2002 report, Dr. Garfinkel opined that appellant's injuries were related to the May 24, 2000 accident, were permanent in nature and could cause lingering inflammation in the knees. He stated his final diagnosis to be right and left knee derangement.

A conflict in medical opinion, therefore, arose after the termination of compensation benefits between appellant's attending physicians, Dr. Novick and Dr. Garfinkel and the Office referral physician, Dr. Rubinfeld, on whether appellant's accepted condition had ceased. Because there was a disagreement in opinion, the Office was under a statutory obligation to refer the case to an impartial medical specialist for the purpose of resolving the conflict.<sup>10</sup> Instead of making such a referral, the Office relied on Dr. Rubinfeld's report in terminating appellant's compensation benefits, deeming it to be the weight of medical evidence in the case. Therefore, the case must be remanded for further development on the issue of continuing disability.

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<sup>6</sup> *John M. Tornello*, 35 ECAB 234 (1983).

<sup>7</sup> 5 U.S.C. § 8123(a).

<sup>8</sup> *See Roger Dingess*, 47 ECAB 123, 126 (1995); *Glenn C. Chasteen*, 42 ECAB 493, 498 (1991).

<sup>9</sup> 5 U.S.C. § 8123(a).

<sup>10</sup> *Id.*

**CONCLUSION**

The Board finds that the Office has met its burden of proof and properly terminated appellant's compensation benefits. The case should be remanded for further development on the issue of continuing disability.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 10, 2004 decision of the Office of Workers' Compensation Programs is affirmed as to termination of benefits; however, the decision is remanded to the Office for further development on the issue of appellant's continuing disability.

Issued: February 15, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member