

FACTUAL HISTORY

On March 15, 2000 appellant, then a 48-year-old census enumerator, was injured when she slipped and fell while crossing a plank bridge. She stopped work on March 31, 2000.¹ On May 30, 2000 the Office accepted the claim for muscle spasms of the right side and thoracic disc displacement and paid compensation for injury-related disability for work.²

In a March 31, 2000 report, Dr. Kenneth William Schulze, an orthopedic surgeon, noted appellant's history of injury, including her left thoracic outlet syndrome. He indicated that she complained of progressive loss of strength in the right arm with weakness of grasp and pinch and with persistent dysesthesia from shoulder to hand since her fall. Dr. Schulze advised that appellant had progressive loss of strength in the right leg with loss of feeling. He noted findings and diagnosed cervical sprain and lumbar sprain. In an April 14, 2000 report, Dr. Michael Kaplan, a Board-certified physiatrist, noted electrodiagnostic evidence of a mild to moderate median nerve entrapment at the wrist on the right, sensory and motor involvement, predominantly demyelinating in nature and opined that this could be consistent with carpal tunnel syndrome.

Appellant also treated by Dr. Charles Young, a general practitioner, who diagnosed neuritis and muscle spasm. He referred her for evaluation by various specialists. Appellant underwent multiple diagnostic studies, including a magnetic resonance image (MRI) scan of her lumbar spine on March 24, 2000 and myelogram and post-myelogram computerized tomography (CT) scans of her cervical, thoracic and lumbar spine performed on July 12, 2000.

In a report dated October 12, 2000, Dr. Young indicated that, at the time appellant slipped on the bridge, she noted tingling in her right arm and right leg with numbness in both of these areas. He noted that her condition had deteriorated since that time and that she was subsequently unable to use her right arm or leg because of decreased mobility. Dr. Young indicated that appellant was seen by a neurosurgeon who diagnosed a disc injury and opined that she remained disabled and would need corrective surgery. In a January 11, 2001 work capacity evaluation, Dr. Young advised that appellant could not work. In a report dated January 25, 2001, he indicated that he was "not exactly sure of the definitive diagnosis" and advised that appellant was seeing a neurologist for her problems. Dr. Young indicated that she had chronic muscle spasms from thoracic disc injury at T8-9 and T11-12 and would probably need physical therapy and possibly surgery. He opined that appellant remained disabled. Dr. Young continued to submit periodic reports.

On March 9, 2001 appellant underwent a successful right C8 nerve root block and on April 12, 2001 she underwent a functional capacity evaluation.

By letter dated July 9, 2001, the Office referred appellant, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Jeffrey M. Hrutkay, a Board-

¹ Appellant received continuation of pay from March 30 to May 11, 2000. She also received continuation of pay for May 12 to 14, 2000.

² The record reflects that appellant had thoracic outlet syndrome with surgery which was not due to the injury.

certified orthopedic surgeon. In a report dated August 22, 2001, he described the history of injury and treatment and conducted a physical examination. Dr. Hrutkay determined that appellant had persistent upper extremity dysesthesia, worse on the right, of unclear etiology with no current evidence of radiculopathy. He also diagnosed lumbar strain/sprain with intermittent right lower extremity pain and no evidence of radiculopathy and thoracic disc protrusion in T8-9 and T11-12. He opined that there were no objective findings with regard to the neck, lower back, upper or lower extremities based upon physical examination findings and diagnostic studies. Dr. Hrutkay opined that positive findings in the lower thoracic level on an MRI scan were likely to be incidental findings and not due to the etiology of any of her symptoms. He advised that appellant's current symptoms were temporarily related to her work injuries but that they were of unclear etiology. Dr. Hrutkay explained that he did not feel that appellant's accepted conditions were causing any of her symptoms as there were no objective findings to provide a definitive diagnosis. He indicated that, although appellant had ongoing subjective complaints, he did not find correlating objective findings. Dr. Hrutkay opined that appellant was currently capable of working in a light- or sedentary-type capacity.

On October 3, 2001 the Office found that Dr. Hrutkay's report created a conflict with the opinions of Dr. Young on the issues of the nature and extent of any ongoing residuals and appellant's ability to work.

On October 4, 2001 the Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. Jeffrey J. Sabin, a Board-certified orthopedic surgeon for an impartial medical examination.

In a November 8, 2001 report, Dr. Sabin extensively reviewed the history of injury and treatment. He described the current physical examination findings, noting that appellant had normal posture and gait in addition to normal back range of motion. Dr. Sabin advised that x-rays taken in his office that day showed normal cervical and lumbar radiographs. The physician indicated that appellant continued to be symptomatic following the work injury of March 15, 2000, but that there were currently no objective findings to support her ongoing subjective complaints. Dr. Sabin stated that the only positive findings on examination were Tinel's and Phalen's in the upper extremities, but that these were "truly more subjective than objective." He particularly noted that there were no objective findings with regard to bulging thoracic discs. Dr. Sabin advised that appellant's continuing subjective symptoms might be attributable to her nonwork-related thoracic outlet syndrome, but that he could not be certain. He reported finding no evidence that the employment injury aggravated any preexisting conditions and that his examination and review of the medical record did not indicate that appellant's bulging thoracic discs were symptomatic. Dr. Sabin opined that she did not require any further medical treatment, including physical therapy or surgery. He stated that he could not provide "a good current diagnosis for the type of complaints" that appellant had. Dr. Sabin opined that, in view of subjective symptoms, she could return to sedentary work.

The Office received progress notes from Dr. Young regarding appellant's ongoing pain complaints. He referred her to Dr. Tuenis Zondag, Board-certified in occupational medicine, for pain management. In an August 14, 2002 report, Dr. Zondag noted appellant's history of injury and described her ongoing complaints of pain and examination findings. He assessed appellant

as having a post fall injury with neck and shoulder strain; injury to the neck and shoulders with probable cervical discogenic problems, disc herniation at L5 with radiculopathy on the right; post-left thoracic outlet 12 years previously which was asymptomatic before reinjury; and chronic pain requiring chronic opioid analgesics. Appellant continued under the care of Dr. Zondag.

On November 7, 2002 the Office issued a notice of proposed termination of compensation on the basis that the weight of the medical evidence, as represented by the report of Dr. Sabin, established that the residuals of the work injury of March 15, 2000 had ceased.

On November 19, 2002 appellant asserted that she had continued residuals of the work injury that were disabling. The Office received additional reports from Dr. Young and Dr. Zondag.

In a report dated November 20, 2002, Dr. Young, opined that appellant's condition was worsening and that this was due to her March 2000 injury. He further related that she continued to need chronic pain management and physical therapy.

By decision dated January 9, 2003, the Office terminated appellant's compensation benefits effective January 26, 2003 on the grounds that she had no continuing residuals of her employment injury.

Appellant requested a hearing on January 30, 2003. She submitted a January 15, 2003 report from Dr. Young who found that she was totally disabled and advised that she still had problems with her hands and legs. He indicated that appellant had numbness and tingling in both hands and could not grasp much of anything without losing it and advised that she also had low back pain with weakness down her legs. Dr. Young advised that these symptoms began after her work injury.

Appellant also submitted reports that she received from Dr. Zondag dated January 23 and 24, 2003. He noted that she was being treated for chronic pain residual following an injury on March 15, 2000. Dr. Zondag described appellant's symptoms of pain and weakness. He noted, however, that diagnostic studies of the cervical spine and nerve conduction studies failed to demonstrate significant abnormalities related to the injury. Dr. Zondag also noted that diagnostic x-ray studies, nerve conduction studies and MRI scans did not show objective evidence of changes.

A hearing was held on January 21, 2004.³ After the hearing, appellant submitted additional medical evidence. In an October 22, 2003 report, Dr. Zontag noted her history of injury and treatment and explained that, because of appellant's injuries and inability to have surgery, she was placed on various medications. Dr. Young stated that she remained

³ Appellant described her accident and submitted additional evidence, including information regarding Oxycontin, and a printout listing claimed travel expenses for which the Office denied reimbursement and the January 9, 2004 reports of Dr. Young and Dr. Zontag. The matter regarding reimbursements is not before the Board on the present appeal.

symptomatic and was unable to work. In a report dated January 9, 2004, Dr. Zondag advised that she had ongoing residuals from her employment injury. He noted that appellant had cervical discogenic pain with pseudoradicular pain and a radiculopathy into her right leg from a disc herniation at the L5-S1 area on the right, which were secondary to her fall. The physician advised that, because of the difficulties she had with pain in her neck and reduced tolerance for her upper extremities and reduced tolerance for lifting, her full-time job had been discontinued. Dr. Zontag noted appellant's thoracic outlet syndrome which previously was asymptomatic, now gave her some symptomatic difficulties. He advised that the fall injury in March 2000 was a significant contributory factor to her cervical discogenic disease, paresthesias in her arms and disc herniation at L5-S1.

By decision dated April 1, 2004, the Office hearing representative affirmed the January 9, 2003 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁶ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁷

The Federal Employees' Compensation Act⁸ provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.⁹ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁰

⁴ *Curtis Hall*, 45 ECAB 316 (1994).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁶ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁷ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁸ 5 U.S.C. §§ 8101-8193, 8123(a).

⁹ 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

¹⁰ *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

ANALYSIS -- ISSUE 1

The Office determined that a conflict of medical opinion existed regarding the nature and extent of any ongoing residuals of the work injury of March 15, 2000 based on the opinions of Dr. Young, appellant's physician and a general practitioner and Dr. Hrutkay a Board-certified orthopedic surgeon and second opinion physician.¹¹ Therefore, the Office properly referred appellant to an impartial medical examiner, Dr. Sabin, a Board-certified orthopedic surgeon.

The Board finds that Dr. Sabin's November 8, 2001 report is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight in establishing that residuals of appellant's employment injury had ceased. Dr. Sabin provided an extensive review of her medical history, reported his examination findings and determined that there were no objective findings to correspond with appellant's subjective complaints. He found no objective evidence of any work-related disability. While Dr. Sabin noted a positive Tinel's and Phalen's study of the upper extremities, he explained that these were "truly" more subjective than objective that they were the only positive findings on examination. He gave a reasoned opinion that despite a myriad of subjective complaints there were no current objective findings of residuals of the March 15, 2000 work injury. Dr. Sabin noted that there was no evidence on examination that appellant's bulging thoracic discs were symptomatic. He answered questions posed by the Office and reiterated that, while appellant had complaints that would limit her to sedentary work, his examination and review of medical records provided no objective basis on which to attribute any symptoms or disability to the accepted employment injury. In these circumstances, the Office properly accorded special weight to the impartial medical examiner's November 8, 2001 findings.

When an impartial medical specialist is asked to resolve a conflict in medical evidence, his opinion, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹² The Board finds that Dr. Sabin's report represents the weight of the medical evidence and established that there were no ongoing objective findings of residuals of the work injury of March 15, 2000.

Subsequent to the evaluation by Dr. Sabin and prior to the termination of benefits, appellant submitted additional reports from Dr. Young, who merely reiterated previously stated findings and conclusions regarding appellant's condition. As the physician had been on one side of the conflict in the medical opinion that the impartial specialist resolved, the treating physician's reports were insufficient to overcome the special weight accorded the impartial specialist or to create a new medical conflict.¹³ The additional reports from Dr. Young do not contain any new information or rationale sufficient to overcome or create a new conflict with the opinion of Dr. Sabin.

¹¹ As previously noted, appellant's treating physician, reported that she continued to be totally disabled and that her disability was the direct result of her March 15, 2000 employment injury, while Dr. Hrutkay, the second opinion physician, indicated that she no longer had any residuals of the accepted work injury.

¹² See *Vaheh Mokhtarians*, 51 ECAB 190 (1999).

¹³ *Barbara J. Warren*, 51 ECAB 413 (2000); *Alice J. Tysinger*, 51 ECAB 638 (2000).

Dr. Zondag described appellant's complaints of pain and listed several diagnoses, some of which were not accepted by the Office, he did not identify objective findings to support those diagnoses. Moreover, he did not provide a rationalized opinion that any of appellant's existing conditions were causally related to the March 15, 2000 employment injury. His reports were, therefore, of little probative value.¹⁴ Furthermore, he opined that appellant was asymptomatic prior to the injury and that after the injury she became symptomatic with regard to her thoracic outlet syndrome. The Board has noted that the mere fact that an employee is asymptomatic before an employment injury is insufficient, without supporting medical rationale, to establish causal relationship.¹⁵

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, she must establish by the weight of the reliable, probative and substantial evidence that she had an employment related disability, which continued after termination of compensation benefits.¹⁶

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by her.¹⁷

ANALYSIS -- ISSUE 2

Following the termination of compensation, appellant submitted additional reports from Dr. Young and Dr. Zondag. Dr. Young's reports again reiterated previously stated findings and conclusions regarding her condition. As the physician had been on one side of the conflict in the medical opinion that the impartial specialist resolved, his subsequent similar reports were insufficient to overcome the special weight accorded the impartial specialist or to create a new medical conflict.¹⁸

¹⁴ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹⁵ *Thomas Petrylak*, 39 ECAB 276 (1987).

¹⁶ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

¹⁷ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

¹⁸ See note *supra* 13.

In his January 24, 2003 report, Dr. Zontag described appellant's chronic pain complaints without identifying any objective findings to support the presence of an ongoing injury-related abnormality. He also noted that there were no significant abnormalities related to the work injury in the diagnostic studies. In his January 9, 2004 report, Dr. Zondag opined that appellant had ongoing residuals from the fall she sustained while working as a census employee. However, he provided no rationale for this opinion and did not identify objective findings to support the diagnoses given or provide a rationalized opinion causally relating how these conditions were related to the March 15, 2000 employment injury. He also did not explain his opinion on causal relationship in view of his January 24, 2003 findings that diagnostic studies showed no significant abnormalities due to the employment injury. Thus, the reports received from Dr. Zondag subsequent to the termination of appellant's compensation are insufficient to establish an ongoing condition and disability causally related to the work injury of March 15, 2000. He did not provide any findings and rationale sufficient to overcome or create a new conflict with the opinion of Dr. Sabin.

Consequently, appellant has not established that her condition on and after January 26, 2003 was causally related to her accepted employment injury.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective January 26, 2003. Further, the Board finds that she did not meet her burden of proof to establish that she had any injury related disability or residuals after January 26, 2003 causally related to the March 15, 2000 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2004 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: January 18, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member