

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

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**WILLIAM M. O'NEILL, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Las Cruces, NM, Employer**

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**Docket No. 04-1553  
Issued: January 12, 2005**

*Appearances:*  
*Eugene McGuire, for the appellant*  
*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On May 26, 2004 appellant filed a timely appeal of a February 23, 2004 decision of the Office of Workers' Compensation Programs, denying modification of a September 2, 2003 Office decision terminating medical benefits. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant is entitled to ongoing medical benefits.

**FACTUAL HISTORY**

On January 4, 1995 appellant, then a 51-year-old postmaster, filed a traumatic injury claim for continuation of pay/compensation (Form CA-1) alleging that on that date he sustained injuries when he slipped and fell on ice while in the performance of duty. The Office accepted the claim for cervical, lumbar, left shoulder and hip sprains, head contusion and postconcussion syndrome. Appellant returned to work and then stopped working on October 15, 1996 and filed a recurrence of disability claim. He retired from federal employment as of November 25, 1998. Appellant received compensation for temporary total disability; in February 1999 continuing

compensation was halted pending offset of a third-party recovery for the injury. He began receiving Office of Personnel Management (OPM) benefits and, by letter dated December 20, 2000, the Office advised appellant that he must elect between continuing OPM benefits or benefits under the Federal Employees' Compensation Act.

In a report dated August 3, 2001, Dr. Timothy Gilmore, an attending occupational medicine specialist, opined that appellant had a 20 percent whole person impairment. An Office medical adviser reviewed the evidence and stated in a November 23, 2001 report that appellant should be referred to an independent evaluator. The Office initially declared a conflict in the medical evidence and referred appellant to Dr. Robert Price, a Board-certified neurologist.

The February 2, 2002 statement of accepted facts prepared for Dr. Price did not identify all the accepted injuries in the case. The statement of accepted facts reported that appellant injured his left hip, upper thigh, neck and lower back and "claim was accepted for the stated injuries" and that a contusion to the head was accepted. It did not specifically mention a left shoulder injury or postconcussion syndrome. The question posed to Dr. Price, however, did note the accepted injuries, including postconcussion syndrome, and requested an opinion as to the percentage of permanent impairment.

By report dated March 25, 2002, Dr. Price provided results on examination and reviewed medical records. He diagnosed "history of slip and fall on January 4, 1995 with subsequent complaints of face, neck paresthesias and low back pain; consistent with musculoskeletal straining and/or contusion, probably resolved by this point in time." Dr. Price also diagnosed a symptom complex that included full body numbness of uncertain etiology "probably unrelated to residuals" of the January 4, 1995 incident. In response to the question as to permanent impairment, Dr. Price indicated that the evidence did not suggest a structural brain injury or central nervous system impairment and, therefore, appellant had no impairment for the postconcussion syndrome under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. With respect to the injuries to the cervical, lumbar, left shoulder and hip strains, Dr. Price indicated that review of the medical evidence from the time of injury forward did not show any objective findings with respect to those body regions. He concluded that there were no findings "that reflect any traumatic residual pertaining to possible straining of the cervical, lumbar, left shoulder and left hip regions on January 4, 1995" and appellant did not have a permanent impairment.

In a memorandum dated June 25, 2002, the Office indicated that Dr. Price was not serving as an impartial specialist. The Office noted that no conflict in the medical evidence had existed with respect to a schedule award.

In a letter dated September 27, 2002, the Office notified appellant that it proposed to terminate his compensation for medical benefits on the grounds that the accepted conditions had resolved. The Office noted the findings of Dr. Price and stated that his findings were supported by the consensus of opinion in the medical evidence that showed no objective findings of the accepted conditions.

By decision dated September 2, 2003, the Office terminated entitlement to medical benefits. Appellant requested reconsideration and submitted a July 24, 2003 report from

Dr. James Thomas, Jr., an orthopedic surgeon. The diagnoses included lumbar and cervical radiculopathy, cervical disc bulging and stenosis, with probable left shoulder rotator cuff injury. Dr. Thomas opined that the diagnosed conditions were causally related to the employment injury.

The Office found that a conflict in the medical evidence existed, and appellant, along with medical records and the February 2, 2002 statement of accepted facts, was referred to Dr. David Schenkar, a Board-certified orthopedic surgeon. In a report dated January 27, 2004, Dr. Schenkar opined that, with respect to the left hip, the current examination did “not support more than a contusion that had long since healed.” For the cervical spine, Dr. Schenkar stated that the examination supported a historic neck strain in a person with degenerative joint disease of the neck, but the claim of current severe range of motion restriction with pain due to the injury was not credible because motion limitation disappeared during parts of the examination. Dr. Schenkar noted the left shoulder was not discussed in the statement of accepted facts and that there was subacromial bursitis but nothing to link it to the injury. With respect to the head, Dr. Schenkar stated that reports varied from ones suggesting post-traumatic spinal cord or brain contusion with chronic impairment, to others calling his presentation bizarre and symptom magnified. Dr. Schenkar concluded that appellant’s “strict adherence to his current neck, shoulder, low back and body numbness as DOI [date of injury] related, in the face of clearly knowing the content of [Dr.] Price[’s] exam[ination] and his inconsistencies during this exam[ination] means that this presentation is caused by a conscious injury belief system like a factitious disorder....”

In a decision dated February 23, 2004, the Office denied modification of its prior decision. The Office found that the weight of the evidence rested with Dr. Schenkar.

### **LEGAL PRECEDENT**

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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.<sup>1</sup>

It is well established that 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 on a proper factual and medical background, must be given special weight.<sup>2</sup> Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background of reasonable medical certainty and supported by medical rationale explaining the basis of the opinion.<sup>3</sup>

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<sup>1</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>2</sup> *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

<sup>3</sup> *See Gloria J. McPherson*, 51 ECAB 441, 446 (2000).

## ANALYSIS

The Office decision in this case is limited to termination of medical benefits. Although the Office did not make findings on the issue, it appears that appellant was not receiving compensation for wage loss but had continued to receive benefits from OPM.

In the present case, the Office initially terminated medical benefits on September 2, 2003 based on the report of Dr. Price, a neurologist serving as an Office referral physician.<sup>4</sup> In his March 25, 2002 report, Dr. Price opined that he found no evidence of continuing employment-related residuals. This represented the weight of the evidence as there was no probative medical evidence establishing that appellant continued to have residuals of the accepted employment injuries.

The Board has held that, after termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.<sup>5</sup> In this case, appellant submitted a July 24, 2003 report from an attending physician, Dr. Thomas, opining that appellant continued have diagnosed conditions related to the employment injury. The Office found that a conflict in the medical evidence was created between attending physician Dr. Thomas and the second opinion referral physician, Dr. Price. Section 8123(a) of the Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.<sup>6</sup>

In this case, the Office referred appellant to Dr. Schenkar to resolve the conflict. The Board notes, however, that Dr. Schenkar was not provided a complete and accurate background on which to base his opinions. The February 2, 2002 statement of accepted facts did not properly identify all of the accepted injuries in this case. For example, the Office accepted a left shoulder sprain, but the statement of accepted facts made no mention of a left shoulder injury. The statement of accepted facts indicated that a head contusion was accepted, but did not acknowledge that postconcussion syndrome was an accepted condition. A physician cannot render an opinion as to whether residuals of the employment injuries have ceased unless he has a complete and accurate factual background that clearly identifies all of the accepted employment-related conditions. An opinion of an impartial medical specialist that is not based upon a complete and accurate factual background is not entitled to special weight and cannot resolve a conflict in the medical evidence.<sup>7</sup>

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<sup>4</sup> The Board notes that, although the Office initially referred to Dr. Price as an impartial medical specialist, the June 25, 2002 memorandum correctly note that there was no conflict with respect to a schedule award as the Office medical adviser had recommended further development without providing an opinion. Dr. Price is considered a referral physician.

<sup>5</sup> *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

<sup>6</sup> *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

<sup>7</sup> *See James R. Driscoll*, 50 ECAB 146 (1998).

The Board also notes that Dr. Schenkar did not provide medical rationale with respect to the specific issues presented. Dr. Schenkar stated that the claim of severe neck range of motion was not credible because motion limitation disappeared during parts of the examination. The issue is whether appellant had any residuals of the accepted cervical sprain, or whether the sprain had resolved. Dr. Schenkar did not provide reasoned medical opinions on the relevant issues in this case.

The case will therefore be remanded to the Office for preparation of a complete and accurate statement of accepted facts and referral to an impartial medical specialist to resolve the issue of whether appellant continued to have employment-related residuals entitling him to medical benefits after September 2, 2003. After such further development as the Office deems necessary, it should issue an appropriate decision

### **CONCLUSION**

The Board finds that Dr. Schenkar did not resolve the conflict in the medical evidence as the Office failed to provide a proper factual background and Dr. Schenkar did not provide a reasoned medical opinion that the employment-related injuries had resolved as of September 2, 2003. The case will be remanded for resolution of the conflict in the medical evidence.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 2, 2003 is affirmed; the February 23, 2004 decision is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: January 12, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member