

appellant sustained a recurrence of disability on May 11, 2002. Appellant stopped work on May 13, 2002 and has not returned to work. By letter dated June 25, 2002, the Office placed appellant on the periodic rolls for temporary total disability.

In a report dated November 26, 2002, Dr. Michael Busch, a second opinion Board-certified orthopedic surgeon, diagnosed preexisting degenerative disc disease and lumbar spinal stenosis. He opined that the April 5, 2002 employment injury aggravated the degenerative disc disease. A physical examination revealed “diffuse tenderness throughout the pelvic musculature and sacroiliac area bilaterally.” He stated that her “period of total disability would have been the first week when she was out of work” and that “[t]his would be after her first injury.” In concluding, Dr. Busch stated:

“This patient continues to suffer residuals from this injury. She seems as though she has never clearly improved from the injury of April 5[, 2002]. On May 21[, 2002] she suffered a recurrent injury and had to stop work. Since that time she has not worked. This would be a new injury as she has recovered from the [April 5, 2002] injury. This is an exacerbation of her lumbar disc degeneration. At the present time she is suffering from underlying degenerative disc disease and not the work-related injury of April 5, 2002. She has not returned to her preinjury level. The work[-]related strain has resolved.”

On December 9, 2002 the Office requested clarification from Dr. Busch as the evidence did not establish that appellant sustained a new injury and the claim was only accepted for a lumbar strain.

In a January 3, 2003 addendum, Dr. Busch opined that appellant sustained a lumbar strain on April 5, 2002 and that this condition had resolved. With regard to appellant’s continued symptoms, Dr. Busch described her degenerative disc disease and disc herniation which were not due to the April 5, 2002 employment injury.

On January 21, 2003 the Office received a January 17, 2003 report from Dr. Kem S. Yenal, a Board-certified family practitioner, who opined that appellant’s degenerative disc disease had been aggravated by her April 5, 2002 employment injury. In support of this conclusion, he noted that appellant had been asymptomatic prior to the injury and had no history of back problems. Dr. Yenal stated that appellant has had chronic lower back pain since the April 5, 2002 incident when she was loading mail onto a truck.

In a report dated January 21, 2003, Dr. Yenal opined that appellant’s April 5, 2002 back injury “was not simply back strain but an aggravation or exacerbation of her lumbar dis[c] disease.” Dr. Yenal noted that an April 6, 2002 x-ray interpretation “showed some dis[c] space narrowing of L5-S1” and “some narrowing of L4-L5.” Prior to her injury, appellant had no history of back pain and “has continued to have low back pain since April 5, 2002.” A May 5, 2002 magnetic resonance imaging (MRI) scan of the lumbosacral spine revealed “diffuse bulging dis[c]s at L3-L4, L4-L5 resulting in moderate canal stenosis, and “moderate-sized Tarlov cysts in the spinal canal at S2. Based upon this evidence, Dr. Yenal opined that appellant “likely had prior lumbar degenerative dis[c] disease, which was aggravated by her lifting at work.”

On February 10, 2003 the Office received a January 30, 2003 report by Dr. Kenneth Zahl, an attending Board-certified anesthesiologist and pain medicine specialist. He reported that appellant sustained an injury on April 5, 2002 while “working and loading mail on a truck” when she sustained “a rather sudden onset of low back pain,” but continued working. Dr. Zahl diagnosed lumbar disc herniation with significant herniation at L4-5 causing possible impingement at left L5 nerve root and some stenosis, weakness of left foot with foot-drop with early signs of reflex sympathetic dystrophy and symptomatic radiculitis. He opined that the Office had erred in accepting the claim for a lumbar strain as appellant has severe lumbar degenerative disc disease “with an exacerbation at work as you described to me.” Dr. Zahl reported:

“You did work for over a year at this particular position, so whatever illness that you had in your back was certainly not a factor which (sic) you work. There was a clear worsening of your work ability after the injury and at this time I easily find you disabled. The reason why I am finding you disabled is that you cannot stand and walk without assistance and certainly you cannot carry more than 10 pounds.”

* * *

“Whether or not you had disease in your back is really not an issue. You did work with this preexisting disease earlier and it did not impair your work. It was not until you had a recent injury as described in April 2002 that you were then disabled.”

On March 13, 2003 the Office referred appellant to Dr. Thomas D. DiBenedetto, a Board-certified orthopedic surgeon, to resolve a conflict in the medical opinion evidence found between appellant’s attending physicians, Drs. Yenal and Zahl, who concluded that her degenerative disc disease had been aggravated by the April 5, 2002 employment injury and that she was disabled due to the employment injury, and the Office referral physician, Dr. Busch, who concluded appellant’s degenerative disc disease had been temporarily aggravated by the April 5, 2002 employment injury and that any current disability was due to the underlying degenerative disc disease.

On April 15, 2004 the Office received a March 24, 2004 report by Dr. DiBenedetto. He reviewed the statement of accepted facts, questions posed, the medical evidence of record and provided findings on physical examination. Dr. DiBenedetto diagnosed a resolved lumbar strain and preexisting degenerative disc disease. A physical examination revealed no paraspinal spasm, no evidence of lumbar strain and no tenderness. Appellant did show “some nonphysiologic findings including giving way weakness of both her lower extremities in all muscle groups.” Based upon a review of an MRI scan, these findings did not correlate to the findings of degenerative disc disease small herniation and spinal stenosis. With regards to limitations, he opined that she had no limitations due to her employment injury, but did have limitations due to her preexisting lumbar degenerative disc disease. He concluded that appellant had returned to her preinjury level and any restrictions were due to her nonemployment-related degenerative disc disease. In an accompanying restriction evaluation, Dr. DiBenedetto reported that appellant suffers from nonemployment-related spinal degenerative disc disease and she has permanent restrictions due to this condition.

In a May 14, 2003 addendum, Dr. DiBenedetto, responded to the Office's request for additional information. He opined that appellant did not sustain "an aggravation of her preexisting condition" due to the April 5, 2002 employment injury. He also stated that "if an aggravation of any degenerative condition was sustained, it would be temporary." Dr. DiBenedetto stated that the diagnostic testing did not support a finding of "any acute structural injury that would make one consider an aggravation to be permanent," but that the studies did reveal significant spinal degenerative disc disease. He added that he provided his opinion "with a reasonable degree of medical certainty."

On July 15, 2003 the Office issued a notice of proposed termination of benefits based upon Dr. DiBenedetto's report that she no longer suffered from residuals of her April 5, 2002 employment injury.

In a letter dated August 5, 2003, appellant disagreed with the proposal to terminate her benefits. She contended that the medical evidence established that she sustained a recurrence of disability on May 11, 2002 and suffers from lumbar strain and disc herniations which are one of symptoms of acute d[egenerative] d[isc] d[isease] aggravation." Appellant also alleged that no conflict arose at the time of the referral to Dr. DiBenedetto. With regards to Dr. DiBenedetto, she contended that his opinion was not entitled to special weight as the "report lacks comprehensiveness." Appellant contended that the statement of accepted facts was inaccurate and incomplete.

On August 15, 2003 the Office received a June 26, 2003 clinic note from Dr. Yenal who diagnosed lumbar degenerative disc disease with herniated discs at L4-5 and L5-S1 and noted symptoms of left radiculopathy. He reported that appellant had a history of degenerative disc disease with herniated disc at L4-5.

In response to the Office's proposal to terminate benefits, appellant submitted a statement regarding her job and the duties required, a July 1997 article on musculoskeletal disorders (MSD) and workplace factors, an August 13, 2003 report by Dr. Zahl and a September 15, 2003 report from Dr. Yenal.

Dr. Zahl, in his August 13, 2003 report, based upon a review of medical evidence and a job description provided by appellant, diagnosed a lumbar disc herniation with significant herniation at L4-5 and L5-S1 with probable nerve root impingement, severe degenerative disc disease, spinal stenosis and a Tarlov cyst at S2. He noted that degenerative disc disease "can be brought on prematurely, and to a much worse degree in high-risk job environments." He opined that "[i]n this particular case such single attempt of trying to lift a heavy load happened on April 5, 2002 and caused or aggravated disc herniations, which became symptomatic at that time." Dr. Zahl stated that "causative factors within the patient's employment, were competent to cause or aggravate disc disease and, in fact, materially contributed to the normal process of degeneration." He noted that the April 5, 2002 employment injury accelerated the degenerative process. In summarizing his opinion, Dr. Zahl stated:

"At (sic) relatively young age [appellant] sustained a severe degeneration of lumbar spine with spinal stenosis, sclerotic changes and almost collapsed disc. These changes are progressing and irreversible, and normal process of

degeneration has been altered by job[-]related factors [appellant] has been exposed to continuously. Thus, aggravation sustained by the patient is permanent. [Appellant] will never return to her preinjury level, and is permanently disqualified for a mail carrier position.”

In a September 15, 2003 report, Dr. Yenal opined that appellant continued to experience residuals of her accepted April 5, 2002 employment injury. He opined that the more accurate diagnosis would be lumbar degenerative disc disease with aggravated herniated disc and not the accepted diagnosis of back strain.

By decision dated December 4, 2003, the Office finalized the termination of benefits on the grounds that the effects of the April 5, 2002 employment injury had ceased. The Office found that the weight of the evidence rested with the opinion of the impartial medical examiner, Dr. DiBenedetto. The Office rejected appellant’s contention that the statement of accepted facts and condition was inaccurate and incomplete. It also found that the report of Dr. Zahl reiterated his opinion from previous reports. The Office informed appellant that her benefits would be terminated effective December 28, 2003.

On January 2, 2004 appellant requested an oral hearing.

By decision dated October 5, 2004, an Office hearing representative affirmed the December 4, 2003 decision, finding that the Office met its burden of proof to terminate appellant’s compensation based upon the report of Dr. DiBenedetto, the impartial medical examiner. The Office determined that his report established that appellant’s injury-related disability had ceased and that any residual disability was unrelated to the accepted employment injury.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee’s benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.² 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.³

After the Office properly terminates an appellant’s benefits, the burden of proof shifts to appellant.⁴ For conditions not accepted by the Office as being employment related, it is the

¹ *Paul L. Stewart*, 54 ECAB ____ (Docket No. 03-1107, issued September 23, 2003).

² *Elsie L. Price*, 54 ECAB ____ (Docket No. 02-755, issued July 23, 2003).

³ *James F. Weikel*, 54 ECAB ____ (Docket No. 01-1661, issued June 30, 2003).

⁴ *See Dorothy Sidwell*, 41 ECAB 857 (1990).

employee's burden to provide rationalized medical evidence sufficient to establish causal relation.⁵

In situations where opposing medical opinions on an issue are of virtually equal evidentiary weight and rationale, the case shall be referred for an impartial medical examination to resolve the conflict in medical opinion.⁶ The opinion of the specialist properly chosen to resolve the conflict must be given special weight if it is sufficiently well rationalized and based on a proper factual background.⁷

ANALYSIS

In this case, the Office accepted appellant's claim for a lumbar strain. The Board finds that the Office properly determined that a conflict in the medical opinion existed between appellant's attending physicians, Drs. Yenal and Zahl, and Dr. Busch, an Office referral physician, concerning whether appellant had recovered from the employment injury and whether her preexisting degenerative disease had been aggravated by the April 5, 2002 employment injury. The case was properly referred appellant to Dr. DiBenedetto to resolve the conflict.

In a March 24, 2004 report by Dr. DiBenedetto, based upon a review of the statement of accepted facts, questions posed, review of medical evidence and a physical examination, diagnosed a resolved lumbar strain and preexisting degenerative disc disease. A physical examination revealed no paraspinal spasm, no evidence of lumbar strain and no tenderness. He reported that appellant did show "some nonphysiologic findings including giving way weakness of both her lower extremities in all muscle groups." Dr. DiBenedetto noted these findings did not correlate to the findings of degenerative disc disease small herniation and spinal stenosis based upon a review of an MRI scan. With regards to limitations, he opined that she had no limitations due to her employment injury, but did have limitations due to her preexisting lumbar degenerative disc disease. He concluded that appellant had returned to her preinjury level and any restrictions were due to her nonemployment-related degenerative disc disease. In a May 14, 2003 addendum, Dr. DiBenedetto responded to the Office's request for additional information. He opined that appellant did not sustain "an aggravation of her preexisting condition" due to the April 5, 2002 employment injury. Dr. DiBenedetto also concluded that "if an aggravation of any degenerative condition was sustained, it would be temporary." In support of this conclusion, Dr. DiBenedetto indicated that the diagnostic testing did not support a finding of "any acute structural injury that would make one consider an aggravation to be permanent" although the studies did reveal significant spinal degenerative disc disease.

The Board finds that this report was based on a sufficient factual and medical background to constitute the weight of the medical opinion evidence and resolve the existing conflict of medical opinion evidence. The Board further finds that Dr. DiBenedetto offered sufficient medical reasoning and rationale in support of his opinions that appellant's accepted employment-

⁵ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁶ *Richard L. Rhodes*, 50 ECAB 259, 263 (1999).

⁷ *Sherry A. Hunt*, 49 ECAB 467, 471 (1998).

related condition had resolved and that she had no continuing work-related disability. Dr. DiBenedetto stated that there were no objective findings to support a finding that her preexisting degenerative disc disease had been permanently aggravated by the April 5, 2002 employment injury. He stated that her lumbar strain and any aggravation of her degenerative disc disease due to the April 5, 2002 employment injury had resolved. Dr. DiBenedetto attributed appellant's current condition to her preexisting degenerative disc disease. His opinion that appellant had no work-related disability are sufficiently probative and reliable to constitute the weight of the medical evidence and sufficient to support the Office's termination of benefits.⁸

Following the proper termination of appellant's compensation benefits, the burden of proof shifted to appellant to establish continuing employment-related disability.⁹

Appellant has submitted medical reports from her attending physicians, Drs. Zahl and Yenal supporting her claim that her degenerative disc disease had been permanently aggravated by her April 5, 2002 employment injury and that her current disability was a result of that permanent aggravation. In a September 15, 2003 report, Dr. Yenal opined that appellant continued to suffer from residuals of her accepted April 5, 2002 employment injury and a more accurate diagnosis would be lumbar degenerative disc disease with aggravated herniated disc and not the accepted diagnosis of back strain. Dr. Zahl, in an August 13, 2003 report, diagnosed a lumbar disc herniation with significant herniation at L4-5 and L5-S1 with probable nerve root impingement, severe degenerative disc disease, spinal stenosis and a Tarlov cyst at S2. He opined that "[i]n this particular case such single attempt of trying to lift a heavy load happened on April 5, 2002 and caused or aggravated disc herniations, which became symptomatic at that time." Dr. Zahl concluded that "causative factors within the patient's employment, were competent to cause or aggravate disc disease, and in fact, materially contributed to the normal process of degeneration." He further concluded that the April 5, 2002 employment injury accelerated the degenerative process. As Dr. Yenal and Dr. Zahl had been on one side of the conflict resolved by the opinion of Dr. DiBenedetto, the Board finds their additional reports are insufficient to overcome the report of the impartial specialist.

CONCLUSION

The Board finds that the weight of the medical evidence establishes that appellant no longer had disability or residuals of her April 5, 2002 employment injury by December 28, 2003 and, as such, the medical evidence does not establish that appellant's April 5, 2002 employing injury aggravated her lumbar degenerative disc disease or caused or aggravated her herniated disc at L4-5 and L5-S1.

⁸ *Solomon Polen*, 51 ECAB 341 (2000).

⁹ See *Dorothy Sidwell*, *supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 5, 2004 is affirmed.

Issued: June 22, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member