

FACTUAL HISTORY

On May 5, 1994 appellant, then a 41-year-old materials sorter and classifier, injured her back while picking up computer monitors and printers in the performance of duty.¹ Appellant stopped work on May 5, 1994 and returned to light duty on August 1, 1994.² The Office accepted appellant's claim for a lumbar strain.³

In a May 5, 1994 report, Dr. Rafael Hasbun, appellant's attending Board-certified internist, noted that appellant presented with complaints of back pain since November 1993. He indicated that appellant's current complaints occurred after picking up a computer at work. Dr. Hasbun diagnosed lower back pain and degenerative joint disease of the back. He suggested ruling out a herniated nucleus pulposus.

A May 16, 1994 computerized axial tomography (CAT) scan of the lumbar spine read by Dr. Mark T. DiMarcangelo, a Board-certified diagnostic radiologist osteopath, indicated that the study was essentially unremarkable with only minimal bulging of the L4-5 disc and no evidence of a herniated nucleus pulposus.

The record reflects that appellant was treated by several physicians, who placed her on light duty, including: Dr. David Bosacco, a Board-certified orthopedic surgeon, Dr. Max Burger, a Board-certified family practitioner and Dr. Eric N. Kruger, Board-certified in family practice, for her low back strain. Dr. Burger, in a May 22, 1996 report, advised that appellant should be placed on total disability as she was unable to continue with light duty. In his September 13, 1996 report, Dr. Burger also diagnosed lumbar disc disease and again advised that appellant was disabled for work.

Appellant stopped working on July 20, 1996 and filed a claim for a recurrence of disability on July 21, 1996.

On October 10, 1996 the Office referred appellant for a second opinion examination with Dr. Daniel J. Ragone, a Board-certified physiatrist. In his October 31, 1996 report, Dr. Ragone noted appellant's history of injury and treatment and diagnosed chronic lumbar myofascial pain syndrome, chronic pain syndrome, piriformis, gluteal and iliotibial band syndrome and an L5-S1 disc herniation on CAT scan. He advised that appellant had increased pain and discomfort since being on light duty with prolonged standing and sitting and noted additional work restrictions. Dr. Ragone advised that he did not believe appellant would return to her preinjury level and that, based on Dr. Burger's medical records, a herniated disc was found at the L5-S1 region, which

¹ The record reflects that appellant has a prior work-related injury sustained on September 1, 1993 that was accepted for lumbar strain. Case No. A3-189384.

² The record reflects that appellant performed these light duties through July 20, 1996 with intermittent periods of lost time. She stopped working on July 20, 1996.

³ On September 28, 1995 the Office determined that appellant was reemployed as a materials examiner and identifier with restricted lifting and bending, which reasonably represented her wage-earning capacity. The Office determined that appellant was not entitled to wage-loss compensation as her earnings were equal to the date-of-injury position.

would be considered a progression of appellant's present medical condition. In a supplemental report dated November 29, 1996, Dr. Ragone advised having a functional capacity evaluation before a determination of appellant's disability could be made and that no further medical treatment was needed with regard to appellant's subjective complaints.

On December 19, 1996 the Office advised appellant that her claim was accepted for medical benefits. She was also advised that a decision on entitlement to wage-loss compensation would be made following a functional capacity evaluation.

By letter dated July 7, 1997, the Office referred appellant for an impartial evaluation with Dr. Michael Okin, a Board-certified orthopedic surgeon, to determine the extent of impairment residuals to the work-related injury and employment conditions. Dr. Okin was also asked to provide an opinion as to whether a functional capacity evaluation was needed, and if so, to schedule one for appellant.

In a report dated July 30, 1997, Dr. Okin noted appellant's history and advised that appellant probably had some disc degenerative disease of the lumbar spine and noted that there appeared to be significant "symptom magnification." He related that appellant's complaints were primarily related to her disc degenerative disease of the spine and that the sprain of her back was probably resolved. He also opined that appellant probably was disabled from her original occupation as a warehouse worker and that she could do sedentary-type work.

By letter dated September 1, 1997, the Office requested clarification regarding whether appellant's degenerative disease was caused or related to the May 5, 1994 employment injury by cause or aggravation.

In an August 28, 1997 response, Dr. Okin opined that he could not determine what appellant's capabilities were prior to his examination.

In a March 23, 1998 decision, the Office denied appellant's claim for entitlement to disability compensation and medical benefits effective July 30, 1997, as the evidence did not establish that the disability was related to the work injury of May 5, 1994.⁴ This decision was set aside and remanded for further development by an Office hearing representative, by decision dated August 21, 1998, on the basis that no pretermination notice was given and that appellant's physician continued to indicate that treatment was needed.

In a July 1, 1998 report, Dr. Kruger one of appellant's treating physicians, noted appellant's history of injury and treatment and advised that her back condition was a direct result of the injury she sustained on May 5, 1994. He noted that, although appellant had back pain prior to that date, it did not require treatment. He opined that appellant was able to do only sedentary work.

⁴ The Office also denied modification of the loss of wage-earning capacity decision dated September 28, 1995 as the evidence did not establish that appellant's disability effective July 30, 1997 was still related to the work injury of May 5, 1994.

By letter dated September 22, 1998, the Office advised appellant that she was being referred for an impartial medical evaluation with Dr. Okin, a Board-certified orthopedic surgeon. In an October 9, 1998 report, Dr. Okin advised that he saw appellant for reevaluation on October 1, 1998. He noted appellant's history of injury and advised that he had last seen appellant on July 24, 1997 for an impartial medical examination and indicated that appellant related that "nothing has changed in her life."⁵ Dr. Okin diagnosed degenerative disc disease of the lumbar spine and a resolved lumbosacral spine sprain. He advised that appellant had a significant amount of symptom magnification on examination and noted that appellant's complaints were primarily of low back pain, which would go along with degenerative disc disease of the lumbar spine. Dr. Okin opined that the residuals of appellant's lumbosacral spine strain were resolved. He indicated that appellant would not be able to return to any occupation other than sedentary work with lifting restrictions of no more than 10 pounds.

On October 30, 1998 the Office issued a notice of proposed termination of compensation. The Office found that the impartial medical examiner's October 9, 1998 report represented the weight of the medical evidence of record. By decision dated December 10, 1998, the Office found that appellant was no longer disabled from work due to the effects of her accepted injuries and terminated her compensation benefits.

In a December 10, 1998 report, Dr. Burger opined that appellant continued to suffer from persistent back pain and was unable to be gainfully employed.⁶

By letter dated January 4, 1999, appellant, through her attorney, requested a hearing, which was held June 29, 1999.

By decision dated October 4, 1999, the Office hearing representative reversed the December 10, 1998 decision and remanded the case for further development. The Office hearing representative determined that, at the time of the referral to Dr. Okin, there was no conflict in medical opinion and the Office should have accepted the recurrence claim and commenced payment of compensation. Therefore, the Office did not meet its burden of proof to terminate entitlement to compensation benefits. However, the Office hearing representative determined that Dr. Okin's report was sufficient to create a conflict and that the Office should resolve the conflict between Dr. Okin and appellant's treating physicians and refer appellant to an impartial medical specialist to resolve the conflict regarding whether appellant's current low back condition was causally related to May 5, 1994 employment injury.

On December 10, 1999 the Office referred appellant to Dr. John P. Salvo, a Board-certified orthopedic surgeon, to resolve the conflict between Drs. Burger and Bosacco, who

⁵ In his July 30, 1997 report, Dr. Okin opined that appellant had degenerative disease of the lumbar spine and that significant symptom magnification was present. He also opined that appellant's sprain of her back was "probably resolved. In a supplemental report dated August 28, 1997, Dr. Okin advised that appellant was capable of sedentary work.

⁶ He referred to a November 17, 1998 report from Dr. Dhirahj K. Panda, a Board-certified neurological surgeon, who diagnosed lumbar spondylosis and indicated that appellant should undergo physical therapy.

found that appellant's condition continued and was related to her employment injury and Dr. Okin, who opined that appellant had no residuals due to her May 5, 1994 employment injury.

In a January 18, 2000 report, Dr. Salvo noted appellant's history of injury and treatment and concluded that appellant sustained a soft tissue injury in the form of lumbosacral sprain and advised that there was no evidence to support a claim of symptomatic disc herniation and no evidence to support a claim of sciatic impingement. He noted preexisting degenerative changes, which were unrelated to the accepted injury and which were the result of her ongoing problems. He noted that he could not find the magnetic resonance imaging (MRI) scan mentioned in the records. Dr. Salvo determined that the effects of the employment injury ceased after three or four months. He opined that he did not believe any of appellant's physical limitations were related to her employment injury.

By decision dated April 7, 2000, the Office terminated appellant's compensation and medical benefits on the grounds that her employment-related disability had ceased. The Office based its decision on the January 18, 2000 report of Dr. Salvo.

An April 21, 2000 MRI scan of the lumbar spine, read by Dr. Andrew S. Zeiberg, a Board-certified diagnostic radiologist, revealed a tear in the annulus fibrosis of the L5-S1 disc in the left paracentral region, with no focal protrusion and a bulging disc at L4-5.

By letter dated April 13, 2000, appellant, through her attorney, requested a hearing, which was held on October 30, 2001.

By decision dated January 24, 2002, the Office hearing representative reversed the Office's April 7, 2000 decision because the Office did not provide pretermination notice. The Office hearing representative also determined that the impartial medical examiner's report was speculative and failed to resolve the issue of whether appellant's preexisting back condition was aggravated by the employment injury and his report was therefore insufficient to resolve the conflict of medical opinion which required resolution. The case was remanded to the Office for reinstatement of benefits and further development.

By letter dated March 1, 2002, the Office referred appellant for an impartial examination with Dr. Evan O'Brien, a Board-certified orthopedic surgeon, to determine whether appellant still had residuals of the May 5, 1994 employment injury.

In an April 11, 2002 report, Dr. O'Brien noted appellant's history of injury and treatment, relating that appellant's chief complaint was "constant low back pain in the center of her low back region." He conducted a physical examination and noted that the period of disability was from May 5 to August 2, 1994, with appellant performing light duty until July 20, 1996, when she stopped working. Dr. O'Brien indicated that a physical examination revealed a normal mental status, normal skin, normal gait, a regular heart rate and a straight spine. He noted tenderness on palpation of the lower lumbar region and tenderness over the L4 to S1 spinous processes and that range of motion of the lumbar spine showed full flexion. Dr. O'Brien also noted that appellant had difficulty extending backwards due to complaints of pain and also had pain rising from a flexed position. He indicated that motor examination showed full strength in

the lower extremities and that the sensory examination was normal. Dr. O'Brien opined that a lumbar sprain was a temporary injury and that it had completely resolved eight years post injury. He indicated that appellant no longer had any ongoing disability directly related to the lumbar sprain of May 5, 1994. Dr. O'Brien further related that her chronic back pain related to appellant's discogenic degenerative disc disease, would cause appellant to be limited to sedentary or light work. He further advised that, without seeing a current MRI scan, he could not determine with certainty, her disability as it related to her preexisting conditions. Dr. O'Brien opined that appellant could be gainfully employed at least in a sedentary or light-duty position and that he might increase her findings if the MRI scan findings were benign.

On May 2, 2002 the Office issued a notice of proposed termination of compensation. The Office proposed to terminate appellant's compensation on the basis that the weight of the medical evidence, as represented by the report of Dr. O'Brien, established that the residuals of the work injury of May 5, 1994 had ceased.

By letter dated May 15, 2002, appellant, through her representative, alleged that the report of Dr. O'Brien was speculative in that he advised that "a current MRI scan might be helpful to diagnose any current back problems."

By decision dated June 3, 2002, the Office terminated appellant's compensation benefits effective June 15, 2002 on the grounds that appellant had no continuing disability or medical residuals causally related to the May 5, 1994 employment injury.

In a May 28, 2002 report, received by the Office on September 23, 2002 Dr. David F. Headley, a Board-certified internist and appellant's treating physician, advised that he last saw appellant on May 8, 2002 for chronic back pain and that she continued to be restricted in mobility due to her work-related injury of May 5, 1994. He diagnosed discogenic disease of the lumbar spine and opined that appellant's condition remained static and that she continued to suffer with back pain.

Appellant, through her attorney, requested a hearing on June 4, 2002, which was held on March 18, 2004.

In a September 3, 2002 report, Dr. Headley related that he had seen appellant since August 19, 1999 for severe back pain. He noted her employment injury of May 1994, sustained while lifting computer equipment at work. Dr. Headley advised that appellant's pain had not improved and varied in degree from "4 out of 10 at best to 9 out of 10 at the worst."

By decision dated June 1, 2004, the Office hearing representative affirmed the June 3, 2002 decision. He determined that the Office met its burden of proof to terminate appellant's compensation, based upon the report of Dr. O'Brien, the impartial medical examiner. The Office determined that his report was entitled to the weight of the evidence and established that appellant's injury-related disability had ceased by June 15, 2002 and that any residual disability appellant had was unrelated to the accepted injury.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁷ 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.⁸

Furthermore, the Federal Employees' Compensation Act⁹ 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.¹⁰ 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.¹¹

ANALYSIS -- ISSUE 1

The Office found that a conflict of medical opinion existed regarding the nature and extent of any ongoing residuals of the work injury of May 5, 1994 based on the opinions of Drs. Bosacco and Burger, who supported an ongoing employment-related condition and disability and Dr. Okin, a second opinion physician, who opined that the employment-related condition had resolved. Therefore, the Office properly referred appellant to Dr. O'Brien, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict.¹²

In his April 11, 2002 report, Dr. O'Brien noted appellant's history of injury, which included a chief complaint of constant low back pain. He conducted a physical examination, which he noted was essentially normal and advised that, although appellant had tenderness on palpation of the lower lumbar region and the L4 to S1 spinous processes, the range of motion of the lumbar spine showed full flexion. Dr. O'Brien advised that appellant had difficulty extending backwards due to complaints of pain and also had pain rising from a flexed position;

⁷ *Curtis Hall*, 45 ECAB 316 (1994).

⁸ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁹ 5 U.S.C. §§ 8101-8193, 8123(a).

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

¹¹ *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

¹² Prior to the referral to Dr. O'Brien, appellant was referred to Dr. Salvo in early 2000 for resolution of the medical conflict. However, the Office hearing representative, on January 24, 2002 found that Dr. Salvo's report was insufficient to resolve the medical conflict and directed further development. In these circumstances, it was not improper for the Office to refer appellant to Dr. O'Brien, for resolution of the conflict. The Office also properly found that Dr. Okin could not serve as an impartial specialist where there was no conflict in the medical evidence and where he had previously examined that appellant as a second opinion referral physician. *See Bailey Varnado, Jr.*, 53 ECAB 755, 760 (2002).

however, motor examination showed full strength in the lower extremities and her sensory examination was normal. He explained that a lumbar sprain would be a temporary injury, that it had completely resolved and that appellant had no ongoing disability directly related to the lumbar sprain of May 5, 1994. Dr. O'Brien also explained that any chronic back pain was related to appellant's discogenic degenerative disc disease, would cause appellant to be limited to sedentary or light work, however, without seeing a current MRI scan, he could not determine with certainty, if her disability related to her preexisting conditions. He opined that appellant could be gainfully employed at least in a sedentary or light-duty position and that he might increase her workload if the MRI scan findings were benign.

The Board finds that Dr. O'Brien's opinion is entitled to special weight as his report is sufficiently well rationalized and based upon a proper factual background. The Office properly relied upon his report in finding that appellant's employment-related condition had resolved. Dr. O'Brien examined that appellant reviewed her medical records and reported accurate medical and employment histories. In his report, the physician emphasized that the employment injury had resolved and that the only factors precluding any return to work were her degenerative preexisting conditions. Accordingly, the Office met its burden of proof to justify termination of benefits.

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, appellant 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.¹³

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 the 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 the 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 the appellant.¹⁴

ANALYSIS -- ISSUE 2

Subsequent to the Office's June 3, 2002 decision, appellant submitted reports dated May 28 and September 3, 2002 from Dr. Headley, Board-certified in internal medicine. In his May 28 2002 report, Dr. Headley opined that appellant continued to be restricted in mobility due

¹³ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

¹⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

to her work injury and diagnosed discogenic disc disease. However, discogenic disc disease was not accepted by the Office and the physician has not otherwise explained with medical reasoning how this could be related to 1995 injury accepted as a lumbar strain. In his September 3, 2002 report, Dr. Headley indicated that appellant's pain had not improved and varied in different degrees; however, he did not address how a lumbar strain could persist for almost eight years, or explain why appellant's discogenic disease affected her condition. Part of a claimant's burden of proof includes the submission of rationalized medical evidence, based on a complete factual and medical background, showing causal relationship.¹⁵

None of the additional reports submitted by appellant addressed the cause of her condition. Consequently, appellant has not established that her condition on and after June 15, 2002 was causally related to her accepted employment injury.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's benefits effective June 15, 2002 and that appellant did not meet her burden of proof to establish that she had any injury-related condition or disability after June 15, 2002 causally related to the May 5, 1994 employment injury.

ORDER

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

Issued: March 24, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁵ *Calvin E. King*, 51 ECAB 394 (2000); *Ernest St. Pierre*, 51 ECAB 623 (2000).