

August 22, 2002 the Office accepted the claim for bilateral S1 radiculopathies, and temporary aggravation of preexisting cervical and lumbar sprains.¹

In a work capacity evaluation (Form OWCP-5c) dated September 5, 2002, appellant's attending physician, Dr. Babubhai Patel, indicated that she remained totally disabled as a result of the work injuries. The Office referred appellant, with medical records and a statement of accepted facts, to Dr. Robert Aiken, a neurologist. In a report dated September 15, 2002, Dr. Aiken provided a history and results on examination. He noted that appellant had many complaints but few objective findings. Dr. Aiken indicated that appellant could return to work, but needed a program of pain management and vocational rehabilitation. He completed an OWCP-5c and indicated that appellant could return to work at four hours per day with limitations.

The Office determined that a conflict in the medical evidence existed with respect to the nature and extent of appellant's employment-related disability. She was referred to Dr. I. Howard Levin, a Board-certified neurologist, to resolve the conflict. In a report dated March 6, 2003, Dr. Levin provided a history, reviewed medical evidence, and discussed findings on examination. Dr. Levin stated, "I do not feel there is any objective evidence that would even remotely suggest that [appellant] has suffered any additional or permanent physical or neurological impairment as a result of injuries she sustained at work on [February 4, 2002]." He did not find there was any evidence that appellant had sustained bilateral S1 radiculopathies or aggravation of preexisting cervical and lumbar sprains as a result of the February 4, 2002 incident. He noted that electromyogram studies had shown abnormalities prior to the February 4, 2002 incident. Dr. Levin concluded that appellant did not need any "further care or treatment as a result of the injuries she sustained on [February 4, 2002]." He did not see any reason why appellant could not return to work on a full-time basis and he expressed concern that she appeared to be accident prone. Dr. Levin concluded that "there continues to be no objective evidence on [appellant's] examination or diagnostic studies to account for her ongoing array of complaints that would suggest she is suffering from any impairment or disability that would prevent her from returning to work on a full-time basis."

Appellant submitted a May 15, 2003 report from Dr. Patel, who stated that appellant had an acute attack of severe low back pain on April 27, 2003. He opined that appellant's condition was causally related to the employment injury on February 4, 2002 and her condition had worsened.

By letter dated May 28, 2003, the Office advised appellant that it proposed to terminate her compensation based on the medical evidence. Appellant submitted a report dated June 11, 2003 from Dr. Robert Ponzio, an osteopath, who provided a history and results on examination. Dr. Ponzio opined that the February 4, 2002 employment injury exacerbated a preexisting degenerative condition in appellant's low back.

By decision dated September 4, 2003, the Office terminated compensation for wage-loss and medical benefits effective September 6, 2003 on the grounds that the medical evidence established that her reemployment-related condition had resolved.

¹ The statement of accepted facts indicated that appellant had six prior work-related injuries commencing in 1998.

Appellant requested a hearing before an Office hearing representative, which was held on April 22, 2004. She submitted an April 26, 2004 report from Dr. Ponzio who reviewed Dr. Levin's report and stated his agreement with Dr. Levin that there was no evidence on physical examination to indicate that appellant was experiencing a leg radiculopathy. Dr. Ponzio stated that the physical examination was consistent with an annular tear or exacerbation of painful degenerative disc disease. He opined that appellant did sustain an exacerbation of her degenerative condition with the February 4, 2002 employment injury. In a report dated April 27, 2004, Dr. Shiva Gopal, a neurologist, provided results on examination and indicated that he had reviewed Dr. Levin's report. He stated that it was clear that appellant had sustained a significant exacerbation of her preexisting cervical and lumbar injuries from the employment-related injury on February 4, 2002. Dr. Gopal suggested that appellant see a pain management specialist.

By decision dated July 13, 2004, the Office hearing representative affirmed the termination of compensation benefits effective September 6, 2003.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.³ The right to medical benefits is not limited to the period of entitlement to disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁴

The Federal Employees' Compensation Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination.⁵ The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁶

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.⁷

² *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

³ *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

⁴ *Frederick Justiniano*, 45 ECAB 491 (1994).

⁵ 5 U.S.C. § 8123.

⁶ 20 C.F.R. § 10.321 (1999).

⁷ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

ANALYSIS

The Office found that a medical conflict existed with respect to the degree of continuing disability from the accepted employment injuries. An attending physician, Dr. Patel, reported that appellant continued to be totally disabled, while Dr. Aiken, a second opinion physician, found that appellant could return to work on a part-time basis initially. Pursuant to section 8123, the Office properly referred appellant to Dr. Levin for a referee examination.

Although appellant argued that Dr. Levin did not provide results on examination, his March 6, 2003 report does provide a complete factual background and findings on examination which include results on neurologic examination. He provided a detailed report based on a complete and accurate background. It is noted that Dr. Levin appeared to dispute whether the February 4, 2002 employment injury caused the accepted bilateral S1 radiculopathies and temporary aggravation of preexisting cervical and lumbar sprains, as accepted by the Office. Dr. Levin indicated, however, that on examination he did not find any objective evidence of any continuing employment-related condition that required treatment. He opined that there was no objective evidence to account for appellant's array of complaints, that she had recovered from the employment injury and that she could return to work. Dr. Levin provided a reasoned medical opinion based on a complete background. As an impartial medical specialist, his opinion is entitled to special weight. The Board finds that the Office met its burden of proof to terminate compensation as of September 6, 2003.

Once the Office has properly terminated compensation, the burden of proof shifts to appellant to establish continuing entitlement to compensation.⁸ Appellant submitted reports from Drs. Ponzio and Gopal that provide an opinion that appellant did suffer an exacerbation of a preexisting condition. As noted above, that is not the issue -- the issue is whether appellant continued to have employment-related residuals after September 6, 2003. The medical evidence submitted does not provide a reasoned medical opinion on this issue and is not sufficient to establish an employment-related condition or disability after September 6, 2003.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate compensation for wage-loss and medical benefits effective September 6, 2003.

⁸ *Talmdge Miller*, 47 ECAB 673 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 13, 2004 is affirmed.

Issued: October 4, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board