

FACTUAL HISTORY

On December 24, 1997 appellant, then a 48-year-old supervisor, sustained an injury to her low back, which the Office accepted for a lumbar strain.¹ Appellant stopped work on December 26, 1997. She returned to regular duty on January 24, 1998.

On March 8, 2000 appellant filed a claim for a recurrence of disability on February 29, 2000 and alleged that it was causally related to her December 24, 1997 employment injury.² Appellant alleged that her job duties included regularly pushing heavy postal containers and heavy cartons of mail in the absence of mail handlers to maintain the machines and keep productivity on the rise. She did not stop work. In a separate statement received by the Office on June 15, 2000, appellant indicated that she was off work since June 9, 2000.

Appellant received treatment from Dr. Sana L. Bloch, a Board-certified neurologist, who stated that appellant was permanently and totally disabled.

She also received treatment from Dr. Theresa Eichenwald, a Board-certified internist, who opined in a December 12, 2000 report that appellant sustained herniated discs in 1999,³ and that the duties of her position, which included standing for long periods of time aggravated her lower back and that pushing and pulling heavy carts also aggravated her condition.

The Office denied the claim on October 20, 2000. In a May 17, 2001 decision, an Office hearing representative vacated the October 20, 2000 decision and remanded the case for referral to a second opinion physician. By letter dated June 19, 2001, the Office referred appellant for a second opinion examination to Dr. Kenneth Falvo, a Board-certified orthopedic surgeon.

In a July 2, 2001 report, Dr. Falvo noted appellant's history of injury and treatment, which included an injury in May 1997 from a fall at work, which showed a "herniated disc." He also noted that appellant had a December 24, 1997 fall at work, which aggravated her low back and neck symptoms. However, the physician stated that appellant lost no time from work until May 26, 2000. On examination Dr. Falvo noted some L4 vertebral spinous process tenderness and left-sided L4-5 paravertebral tenderness. Dr. Falvo diagnosed chronic cervical sprain and multilevel degenerative disc disease and low back strain. He opined that appellant exhibited a mild partial disability and should avoid lifting objects greater than 20 pounds on a repetitive basis and lifting overhead greater than 10 pounds on a repetitive basis during a routine workday. He stated that appellant was otherwise able to work full time in an administrative position as a supervisor and concluded that work hardening was not necessary if restrictions were followed.

¹ Number A2-737573. The record indicates that filed claims for five injuries occurring between 1988 and 2000.

² The Office treated the recurrence claim as a claim for a new occupational disease.

³ A magnetic resonance imaging (MRI) scan of the cervical and lumbar spine dated April 16, 1999, showed bulging at L4-5 and bulging at C3-4, C5-6 and C6-7. A subsequent MRI scan of the cervical spine dated February 7, 2000 showed a degenerative change at C2-3 with disc bulge and spur at C3-4 and C4-5, C5-6, C6-7 and right-sided herniation at that level.

The Office requested clarification from Dr. Falvo on July 23, 2001. It stated that the claim was accepted for a lumbar strain and that certain other conditions were not accepted. In a July 30, 2001 report, Dr. Falvo opined that appellant's work injury temporarily aggravated her preexisting condition of multilevel degenerative disc disease. On August 14, 2001 the Office accepted the claim for degenerative disc disease, multilevel, by aggravation. Appellant received appropriate compensation and benefits.

On August 14, 2001 the Office requested clarification from Dr. Falvo regarding whether the aggravation had ceased.

In an August 24, 2001 addendum, Dr. Falvo responded to the request for clarification and stated that "the aggravation has ceased and therefore the work restrictions are solely related to the preexisting condition." He noted that there was evidence from history of long-standing spinal disorder, which was symptomatic and under treatment at the time of the accident on January 27, 2001. He further explained that the MRI scan of the cervical spine of February 7, 2000 showed preexisting degenerative changes.

In an August 28, 2001 report, Dr. Bloch diagnosed cervical and lumbar discogenic disc disease. She checked a box "yes" to support that the condition was caused or aggravated by an employment activity and explained that appellant was too young to have developed the disease. Dr. Bloch indicated that appellant was totally disabled from May 26, 2000 to August 28, 2001 and had not been advised to return to work. She continued to note appellant's disability and requested authorization for electromyogram (EMG) and MRI scan studies.

On January 15, 2002 the Office determined that there was a conflict in opinion between Dr. Bloch, appellant's treating physician and Dr. Falvo, the second opinion physician, regarding the issue of continuing injury-related disability, which necessitated referral to an impartial medical specialist. The Office referred appellant together with a statement of accepted facts and the medical record to Dr. C.M. Sharma, a Board-certified neurologist and Dr. Benjamin Nachamie, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

In a January 29, 2002 report, Dr. Sharma reviewed appellant's history of injury and treatment, including the statement of accepted facts and the medical record. He conducted an examination and stated that appellant had a normal mental status, normal hearing, normal motor tone, normal reflexes and normal sense of position. Regarding appellant's gait and coordination, Dr. Sharma provided objective findings in his examination which included a normal spontaneous gait, with no foot drop, no limp or ataxia. He stated that appellant could stand on her toes and heels but reported difficulty walking on the toes and heels because of the pain and because of difficulty walking in tandem because of the pain. Dr. Sharma noted that appellant had a normal posture, although on some days she related that she did wear a neck brace; however, she was not wearing one during the examination. He indicated that appellant could stand upright and bend forward and bring her hands to knee level with reported pain in the lower back. Dr. Sharma also noted that she had pain in the neck when turning to look to the left and right shoulder and both shoulders were painful, when attempting to bring the hands around to the back of her spine. He stated that appellant could bring her hands to her hip area only. Dr. Sharma diagnosed soft tissue sprains and a normal neurological examination and stated that there would be no long term neurological problems of a causally related nature. He further indicated that appellant had a

normal neurological examination and that the aggravation caused by the February 29, 2000 injury had ceased. Dr. Sharma further stated that there were no objective findings of disability related to the injury of February 29, 2000 or any prior work-related injuries and that there were no neurological limitations preventing appellant from returning to full-time duty.

On February 5, 2002 the Office authorized EMG studies.

In a March 4, 2002 report, Dr. Lydia Rabinowich, Board-certified in internal medicine and neurology, stated that the nerve conduction studies revealed active denervation with fibrillation and positive sharp waves in the lumbar paraspinal muscles innervated by the L5/S1 nerve roots bilaterally. She noted that there was no evidence of denervation in muscles of the lower extremities. Dr. Rabinowich opined that the study was suggestive of lumbosacral dysfunction and probably lumbar radiculopathy, although there was no evidence of denervation in the appendicular muscles of the lower extremities.

In a June 22, 2002 MRI scan of the cervical spine, Dr. Robin Mitnick, a Board-certified radiologist, determined that appellant had cervical spondylosis with spur at C3-4, C4-5 and C6-7 and spur with underlying disc bulge on the left greater than the right, resulting in cord compression at C5-6 and a disc bulge at T2-3. She also diagnosed cervical radiculopathy. A computerized tomography (CT) scan of the lumbar spine read by Dr. Mitnick revealed mild stenosis at L4-5, mild disc bulge at L5-S1 and a possible lipoma or cyst.

In reports dated June 12, August 19 and October 21, 2002, Dr. Bloch recommended that appellant see a neurosurgeon.

In a July 12, 2002 report, Dr. Nachamie noted the history of injury and treatment. He conducted a physical examination and range of motion measurements noting that appellant had rotation on the right of 25 degrees and on the left of 10 degrees. Dr. Nachamie stated that she had minimal tilt and radiation of pain to either shoulder. Regarding shoulder abduction and forward flexion, he stated they were equal to 90 degrees, with internal rotation to the crest on the right side. Dr. Nachamie stated that appellant had more radiation of neck pain on the right side than on the left. He also noted that appellant made a poor effort regarding grip strength. Dr. Nachamie stated that appellant had bilateral lumbar tightness and would only give 20 degrees of flexion, a faint toe tap and a straight leg raise of 20 degrees, which would go no further on the left than 30 degrees as appellant related "too much pain." Dr. Nachamie indicated that the ankles showed mild pitting edema and the deep tendon reflexes in the lower extremities were normal and the pulses in the feet were not palpable. He explained that the objective findings were not accepted because he did not believe that appellant put forth a good effort during the examination and opined that the date of injury accepted condition appeared to have significantly resolved. Dr. Nachamie also indicated that the current disability was not due to the work-related injuries or its residuals or the factors of employment and that there was no medical evidence to suggest that appellant was currently disabled from performing her date-of-injury position. He prescribed limitations of no lifting over 20 pounds and stated that there were no objective findings that the work-related aggravation, rather than the current condition was the reason for her disability. Dr. Nachamie further noted that no improvement was expected with regard to the accepted condition.

By letters dated August 1 and December 10, 2002, the Office requested clarification from Dr. Nachamie regarding the 20-pound restriction.

In a September 5, 2002 report, Dr. Stephen Onesti, a Board-certified neurological surgeon and treating physician, stated that appellant presented with complaints of neck pain with radiation into the hands and numbness in the feet. He noted that the cervical MRI scan revealed a disc herniation with spinal cord distortion and atrophy at C5-6. He stated that they discussed the risks and benefits of a C5-6 anterior cervical discectomy. He stated that the need for surgery was not an emergency.

In a December 4, 2002 report, Dr. Bloch stated that he was awaiting approval for cervical surgery. He stated that lumbar surgery was also indicated but that the cervical procedure should be done first.

In a December 12, 2002 report, Dr. Nachamie stated that appellant's work-related disability had resolved. He noted that she had degenerative arthritis which was due to genetics and her obesity, which apart from her injury, made it "unwise for her to lift greater than 20 pounds."

On January 13, 2003 the Office issued a notice of proposed termination of compensation on the basis that the weight of the medical evidence established that the residuals of the work injury of February 29, 2000 had ceased.

In a January 22, 2003 report, Dr. Bloch stated that appellant's complaints were a direct result of her work-related injuries of 1990 and 1997, as related to acceleration and deceleration injuries. He opined that appellant remained totally disabled due to severe pain, an inability to lift heavy objects and an inability to twist or turn. He further stated that appellant needed cervical surgery.

In a January 22, 2003 report, Dr. John K. Houten, a Board-certified neurological surgeon, stated that he evaluated appellant for cervical spondylosis. He conducted a physical examination and noted that the cranial nerve and mental status examination were normal. Motor examination was some bilateral weakness in the extremities. Dr. Houten indicated that full flexion extension was not possible at the neck secondary to pain. He also stated that appellant had loss of pin prick sensation in a nondermatomal distribution in the left hand more than the right and gait was within normal limits. Dr. Houten noted that a review of the June 2, 2002 cervical spine MRI scan revealed a generally narrowed spinal canal with a focal disc herniation at C5/6, which caused spinal compression more on the left than on the right side. He opined that appellant had diffuse weakness and sensory loss with symptoms for several years in duration and that surgery was recommended in September 2002, for a C5-6 anterior cervical discectomy infusion with instrumentation, which was reasonable. Dr. Houten explained that the main reason for surgery would be to prevent any further deterioration in her neurologic status.

By decision dated February 28, 2003, the Office terminated appellant's compensation benefits effective March 22, 2003.

Dr. Bloch continued to submit reports indicating that appellant was permanently disabled. In a June 25, 2003 report, Dr. Bloch stated that appellant underwent a right lateral cloward

procedure with removal of the C5-6 disc with fusion on May 15, 2003. He noted that appellant had less spasm in the cervical muscles than previously and stated that a question arose as to whether her injury was an exacerbation of her employment injury or an occupational disease and indicated that he would provide a report in the future.

In a July 24, 2003 report, Dr. Bloch indicated that years of working as a postal worker, which included heavy lifting, twisting and turning, placed appellant at risk of falling on the job and were the competent producing cause of her disabling condition. He reviewed diagnostic reports dating back to 1992 and opined that this demonstrated that appellant had cervical discogenic disc disease. Dr. Bloch noted that Dr. Sharma indicated that appellant had no major neurological deficits; however, appellant underwent surgery of the cervical spine on May 15, 2003. He alleged that this was greater evidence as the actual findings were without any intermediary determination or rationalization as to what was seen. Dr. Bloch subsequently argued that the reports of the previous independent medical examinations were moot due to appellant's surgery.

In a July 31, 2003 report, Dr. Houten opined that the nature of appellant's position required strenuous twisting, lifting and turning, which caused a great deal of stress on the spine. He stated that this was consistent with the progression of the disease seen by spinal specialists to observe the disease at a specific level in the spine progress over time to a point requiring surgical intervention. He opined that it was possible that her medical condition was the result of her performance of her duty at work.

By letter dated August 12, 2003, appellant requested reconsideration. She alleged that Dr. Sharma misunderstood the questions presented to him by the Office. Appellant also alleged that Dr. Nachamie's report was unrationalized. Appellant requested that her claims be consolidated. She submitted additional medical evidence.

By decision dated November 14, 2003, the Office denied modification of the February 28, 2003 decision.

By letter dated February 13, 2004, appellant requested reconsideration. Her representative alleged that the date of injury was incorrect and that there were errors in Dr. Falvo's report. In addition, appellant's representative alleged that Dr. Sharma misunderstood questions posed by the Office. He suggested that the Office was not justified in obtaining a referee examination and that Dr. Nachamie's report was not rationalized. In a March 5, 2004 letter, appellant's representative asserted that the MRI scan of June 4, 1992 did not disclose a herniated disc, while the later MRI scans documented multiple herniated discs, which showed appellant's disability had increased.

By decision dated June 16, 2004, the Office denied modification of the February 28, 2003 decision.

In a June 28, 2004 report, Dr. Bloch questioned how the work-related injury could have resolved, since appellant subsequently had surgery. Dr. Bloch also stated that he disagreed with Dr. Nachamie's opinion that appellant's condition was due to genetics and obesity.

By letter dated July 29, 2004, appellant requested reconsideration.

By decision dated October 28, 2004, the Office denied modification of the June 16, 2004 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

ANALYSIS -- ISSUE 1

The Office determined that a conflict of medical opinion existed regarding the nature and extent of any ongoing residuals of the accepted work injury of lumbar strain and degenerative disc disease, multilevel by aggravation, based on the opinions of Dr. Bloch, for appellant and Dr. Falvo, for the Office. The Board finds that a conflict did arise between Dr. Bloch and Dr. Falvo regarding whether appellant's work-related conditions and disability had ceased. Therefore, the Office properly referred appellant for impartial medical examinations, by Dr. Sharma, a Board-certified neurologist and Dr. Nachamie, a Board-certified orthopedic surgeon, to resolve the conflict.

The Board finds that Dr. Sharma's and Dr. Nachamie's reports are sufficiently well rationalized and based upon a proper factual background such that they are entitled to special weight in establishing that residuals of appellant's employment injury had ceased.

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).

Dr. Sharma determined that there were no objective findings to correspond with appellant's subjective complaints. Regarding whether appellant had ongoing residuals of a lumbar strain, the physician determined that appellant had a normal motor tone, reflexes, sense of position and a spontaneous gait, with no foot drop, no limp or ataxia. Although he noted that appellant's complaints of difficulty walking on the toes and heels and difficulty walking in tandem due to pain, he stated that her posture was normal in spite of wearing a neck brace on occasion. Dr. Sharma indicated that, despite appellant's reports of pain in the neck, when turning and in her shoulders and back, appellant could stand upright and bend forward and bring her hands to knee level. He determined that appellant had soft tissue sprains but that she had a normal neurological examination and that the aggravation had ceased. Dr. Sharma further stated that there were no objective findings of disability related to the injury of February 29, 2000 or any prior work-related injuries and that there were no neurological limitations preventing appellant from returning to full-time duty.

In a July 12, 2002 report, Dr. Nachamie noted examination findings including a poor effort on grip strength and straight leg raising. He opined that the accepted condition appeared to have significantly resolved and explained that appellant's current disability was not due to the work-related injuries or its residuals or factors of employment as there was no medical evidence to suggest that appellant was currently disabled from performing her date-of-injury position. Although Dr. Nachamie prescribed limitations of no lifting over 20 pounds he stated that this restriction was not due to her work-related aggravation as there were no objective findings that the work-related aggravation continued. On December 12, 2002 Dr. Nachamie stated that appellant's work-related disability had resolved and that her restrictions were implemented as appellant had degenerative arthritis, which was due to genetics and her obesity.¹¹

The Board finds that the weight of medical opinion is represented by the reports of the impartial medical specialists. Drs. Sharma and Nachamie conducted thorough examinations and found no basis on which to attribute any continuing residuals to the accepted employment conditions. 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 the reports of Dr. Sharma and Dr. Nachamie represent the weight of the medical evidence and establish that there were no ongoing objective findings of residuals of the accepted work injury.

Subsequent to the evaluation by Drs. Sharma and Nachamie and prior to the termination of benefits, the Office received additional reports from Dr. Bloch, who 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

¹¹ The December 12, 2002 report was in response to an Office request for clarification. The Board has held that where the Office obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, the Office must secure a supplemental report from the specialist to correct the defect in the original report. *Raymond A. Fondots*, 53 ECAB 637 (2002).

¹² See *supra* note 10.

specialist or to create a new medical conflict.¹³ The additional reports from Dr. Bloch do not contain any new information or rationale sufficient to overcome or create a new conflict with the opinions of Drs. Sharma and Nachamie.

Also prior to the termination of compensation, the Office reports from Drs. Rabinowich, Mitnick, Onesti and Houten. However, these physicians did not specifically address the causal relationship between appellant's condition and her accepted employment injury.

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 he had an employment-related disability, which continued after termination of compensation benefits.¹⁴

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.¹⁵

ANALYSIS -- ISSUE 2

Following the termination of compensation, appellant submitted additional reports from Dr. Bloch. However, the reports essentially reiterated the physician's 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, his subsequent similar reports were insufficient to overcome the special weight accorded the impartial specialist or to create a new medical conflict.¹⁶ On July 24, 2003 Dr. Bloch noted previously stated findings and conclusions regarding appellant's condition. He noted that appellant underwent surgery of the cervical spine on May 15, 2003 and alleged that this was greater evidence as the actual findings were without any intermediary determination or rationalization as to what was seen, he basically restated his previous findings.

In his June 28, 2004 report, Dr. Bloch stated that the only report given credence was the report of Dr. Nachamie. He questioned how the work-related injury could have resolved, since

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

¹⁴ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

¹⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

¹⁶ *See supra* note 13.

appellant subsequently had surgery. Dr. Bloch also stated that he disagreed with Dr. Nachamie's opinion that appellant's condition was due to genetics and obesity. As noted above, Dr. Bloch's disagreement with the report of the impartial medical examiner, does not, by itself, shift the weight of the evidence, as he was on one side of the conflict in creating the conflict. The reports received from Dr. Bloch subsequent to the termination of appellant's compensation are insufficient to establish an ongoing condition and disability causally related to the work injury. Dr. Bloch did not provide sufficient findings and rationale sufficient to overcome or create a new conflict with the opinions of Drs. Sharma and Nachamie.

Appellant also submitted a July 31, 2003 report from Dr. Houten, who opined that appellant's position required strenuous, twisting, lifting and turning, which caused a great deal of stress on the spine and was consistent with the progression of the disease which warranted surgical intervention. He opined that it was possible that her medical condition was a result of her work duties. The Board has held that speculative and equivocal medical opinions on causal relationship have no probative value.¹⁷

Consequently, appellant has not established that her condition on and after March 22, 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 March 22, 2003. Further, the Board finds that appellant did not meet her burden of proof to establish that she had any injury-related disability or residuals after March 22, 2003 that were causally related to the employment injury.

¹⁷ See *Alberta S. Williamson*, 47 ECAB 569 (1996); *Frederick H. Coward, Jr.* 41 ECAB 843 (1990); *Paul E. Davis*, 30 ECAB 461 (1979).

ORDER

IT IS HEREBY ORDERED THAT the October 28 and June 16, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 23, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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