

December 30, 2003, appellant was placed on the periodic rolls to receive compensation for temporary total disability.

In a May 25, 2004 report, Dr. Donna N. Canlas, an attending Board-certified family practitioner, indicated that appellant remained totally disabled.

In an August 12, 2004 report, Dr. David G. Vanderweide, a Board-certified orthopedic surgeon and an Office referral physician, opined that appellant had no residuals of her employment-related left shoulder strain and sprain or lumbar disc displacement and could return to work without restrictions.

In order to resolve the conflict in the medical opinion evidence between Dr. Canlas and Dr. Vanderweide as to whether appellant had any continuing disability or medical condition causally related to her September 2003 employment injury, the Office referred her, together with a statement of accepted facts, list of questions and the record, to Dr. Frank L. Barnes, a Board-certified orthopedic surgeon.

In a July 20, 2004 report, Dr. Canlas stated that a functional capacity evaluation demonstrated that appellant was able to perform only sedentary work. She would release appellant to part-time work with work restrictions to coincide with a work hardening program until she could perform full-time regular duty.

In a report dated October 14, 2004, Dr. Barnes provided a history of appellant's condition and findings on physical examination. He stated:

“[Appellant] apparently is not getting better[,] feeling pain with anything that involves her left shoulder and radiates to her foot. She states that her leg is weak.... She notes weakness about her left knee.... She also notes pains and weakness in her left shoulder. She states that various physical therapy and modalities give brief help.

“FUTURE TREATMENT: [Appellant] states that an injection in her back has been proposed, but she is somewhat dubious because she is ‘scared of needles.’ She is still receiving physical therapy.... Overall, she has made no progress. I do note that she had a functional capacity test on June 11, 2004 ... which indicated that she can only do sedentary work and another one on August 12, 2004 ... that indicated that she can do at least a light level of work.”

* * *

“LEFT SHOULDER: The left shoulder shows a full range of motion in all directions. The shoulder is stable to manipulation.... Strength is grossly normal. Upper extremity strength is normal on all sides.”

* * *

“LUMBAR SPINE: Curvature is normal without list, spasm or rigidity. There is tenderness on the left lumbar and gluteal regions. She can bend forward to reach her ankles. She can extend 20 degrees and bend laterally 20 degrees. Straight leg raising while sitting is painless to 90 degrees.

“When supine it is painful on the left at 60 degrees with manifestation and tightness in the thigh. She had similar findings on the right side, but the subjective tightness is less severe. Knee and ankle reflexes are strong. Pelvic rocking, pelvic compression and simulated rotation are painless. She can squat normally and fully. Heel and toe walking are normal. Romberg’s test for balance is normal. Ankle pulses are normal.”

Dr. Barnes concluded that appellant had fully recovered from her accepted left shoulder and lumbar spine condition and could return to work without restrictions.

By letter dated November 21, 2004, the Office advised appellant that it proposed to terminate her compensation and medical benefits on the grounds that the weight of the medical evidence, as represented by Dr. Barnes’ October 14, 2004 report, established that she had fully recovered from her accepted left shoulder sprain and strain and lumbar disc displacement.

By decision dated November 29, 2004, the Office finalized its termination of appellant’s compensation and medical benefits effective December 26, 2004 on the grounds that the medical evidence established that she had no residual disability or medical condition causally related to her September 2003 employment injury.

Appellant requested a review of the written record and submitted additional evidence.

In a December 23, 2004 report, Dr. Rezik A. Saqer, an anesthesiologist and invasive pain specialist, stated that appellant had moderate to severe pain in the left lower back and diagnosed left sacroiliitis, lumbar strain with left radiculopathy, a left shoulder strain and myofascial pain syndrome. He recommended a cortisone injection and physical therapy.

By decision dated April 12, 2005, an Office hearing representative affirmed the November 29, 2004 termination decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.² The Office’s burden of proof includes the necessity of furnishing rationalized medical opinion

¹ *Barry Neutach*, 54 ECAB ___ (Docket No. 01-1532, issued January 6, 2003); *Lawrence D. Price*, 47 ECAB 120 (1995).

² *Id.*

evidence based on a proper factual and medical background.³ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁴

Section 8123(a) of the Federal Employees' Compensation Act provides that, "if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination."⁵ Where 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.⁶

ANALYSIS

The Office accepted appellant's claim for a sprain and strain of the upper left arm and shoulder and a lumbar disc displacement. Effective December 26, 2004, the Office finalized its termination of appellant's compensation and medical benefits on the grounds that the accepted conditions had resolved. The Office, therefore, bears the burden of proof to justify a termination of benefits.⁷

Dr. Canlas, appellant's attending physician, indicated that she was totally disabled. Dr. Vanderweide opined that appellant had no residuals of her employment-related left shoulder strain and sprain and lumbar disc displacement and could return to work without restrictions.

Due to the conflict in the medical opinion evidence between Dr. Canlas and Dr. Vanderweide, the Office properly referred appellant to Dr. Barnes.

Dr. Barnes stated that appellant's condition was not improving and she felt pain in her left shoulder, radiating to her foot, left leg weakness and pain and weakness in her left shoulder. He indicated that physical therapy and other treatment had not been effective. Dr. Barnes stated:

“[Appellant] states that an injection in her back has been proposed, but she is somewhat dubious because she is ‘scared of needles.’ She is still receiving physical therapy.... Overall, she has made no progress. I do note that she had a functional capacity test on [June 11, 2004] ... which indicated that she can only

³ See *Del K. Rykert*, 40 ECAB 284 (1988).

⁴ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

⁵ 5 U.S.C. § 8123(a); see also *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁶ See *Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

⁷ *Willa M. Frazier*, 55 ECAB ____ (Docket No. 04-120, issued March 11, 2004).

do sedentary work and another one on [August 12, 2004] ... that indicated that she can do at least a light level of work.”

He provided findings on physical examination and stated that he found no objective findings to support disability. However, Dr. Barnes noted in his report that appellant had tenderness in the left lumbar and gluteal regions and experienced pain on straight leg raising when in the supine position. He opined that appellant had fully recovered from her accepted left shoulder and lumbar spine condition and could return to work without restrictions. However, Dr. Barnes’ conclusion that appellant could return to work without restrictions was not fully explained and appellant’s continuing symptoms. He noted the fact that a functional capacity evaluation found her incapable of performing full duty and the fact that she was still receiving physical therapy. Dr. Barnes did not provide sufficient rationale to support his conclusion that all residuals of the accepted injury had resolved or that her future treatment was prophylactic in nature due to any underlying condition. The Board finds that the opinion of Dr. Barnes is not entitled to special weight and is not sufficient to resolve the conflict in the medical opinion evidence.

CONCLUSION

The Board finds that the Office has not met its burden of proof in terminating appellant’s compensation and medical benefits.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers’ Compensation Programs dated April 12, 2005 and November 29, 2004 are reversed.

Issued: September 21, 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