

FACTUAL HISTORY

On August 23, 2002 appellant, then a 42-year-old lead case technician, sustained an employment-related cervical strain.¹ She stopped work that day and received appropriate continuation of pay and compensation. Appellant came under the care of Dr. Babubhai S. Patel, a Board-certified internist, who provided a January 9, 2003 report noting findings on examination of the neck. He diagnosed right C5-6 radiculopathy based on electromyographic (EMG) findings, disc herniations at C4-5, C5-6 and C6-7 based on magnetic resonance imaging (MRI) scan, and cervical and right shoulder strains.² He advised that she was totally disabled.

On March 3, 2003 the Office referred appellant, together with a statement of accepted facts, the medical record and a set of questions, to Dr. Steven Valentino, a Board-certified osteopath specializing in orthopedic surgery. By report dated March 20, 2003, Dr. Valentino noted appellant's complaints, including neck pain and his review of the medical record which included MRI scan findings of disc herniations at C4-7 dating back to June 2000. Physical examination of the spine revealed no spasm and a full range of motion. Dr. Valentino advised that there were no objective findings to support her subjective complaints and diagnosed resolved acute cervical strain. He opined that her cervical disc herniations and degenerative changes were not related to the August 23, 2002 work injury. Dr. Valentino found that the work-related acute cervical strain had completely resolved and that appellant could return to her preinjury position without restriction.

In an April 14, 2003 report, Dr. Patel advised that a prior December 18, 2000 employment injury caused permanent damage to her cervical spine resulting in disc herniations and carpal tunnel syndrome aggravated by the August 23, 2002 injury. He noted cervical examination findings of tenderness and restricted, painful movement and advised that she continued to be totally disabled.

The Office determined that a conflict in medical evidence was created between the opinions of Dr. Patel and Dr. Valentino regarding whether appellant's accepted cervical strain had resolved. It referred appellant, together with a statement of accepted facts with an addendum, a set of questions, and the medical record, to Dr. Resnick for an impartial evaluation. Dr. Resnick was specifically asked whether appellant had any residuals of the August 23, 2002 cervical strain.

In a report dated May 13, 2003, Dr. Resnick noted his review of the medical record including the MRI scan findings and appellant's complaints of pain. He reviewed her history of injury and medical treatment. Examination demonstrated full range of motion of the cervical

¹ The instant claim was adjudicated by the Office under File No. A03-2010422. Under File No. A03-2004857, appellant had accepted contusions of the face, scalp and neck that occurred on September 20, 2001; under File No. A03-2001916, an accepted right carpal tunnel syndrome and release; under File No. A03-0256626, a December 18, 2000 right wrist strain, resolved and temporary aggravation of cervical radiculopathy, resolved; and under File No. A03-0252139, a May 19, 2000 sprain and strain of the right hand and wrist.

² The record contains cervical MRI scans dated June 15, 2000, February 6, 2001 and October 31, 2002, all of which demonstrated the disc herniations and degenerative changes.

spine with complaint of tenderness at C6-7. He reviewed the reports of Dr. Patel and Dr. Valentino and noted that the diagnostic studies revealed long-standing degenerative changes at C3 to C7. Dr. Resnick diagnosed minor neck strain in May 2000, objectively resolved, possible additional strains in December 2000 and August 2002, also objectively resolved, and unrelated preexisting carpal tunnel syndrome and cubital tunnel syndrome. He advised that her physical examination showed no objective residual physical impairment of the cervical spine which could be related to a work injury, opining that the effects had resolved. Dr. Resnick stated that the degenerative findings on appellant's MRI scans could produce subjective symptoms but that this was a preexisting condition unrelated to work incidents. He concluded that she was capable of returning to her usual work. In an attached work restriction evaluation, Dr. Resnick noted that appellant did not have any limitations for her usual employment.

By letter dated August 26, 2003, the Office proposed to terminate appellant's compensation benefits, based on Dr. Resnick's opinion that the accepted acute cervical strain had resolved. Appellant, through counsel, disagreed with the proposed termination, and submitted an August 5, 2003 note in which Dr. Patel advised that appellant would be totally disabled for four additional weeks and was responding to acupuncture treatment. In a decision dated October 9, 2003, the Office finalized the termination, effective that day. It found that the weight of medical opinion was represented by Dr. Resnick.

Appellant, through her attorney, timely requested a hearing and submitted additional evidence including Dr. Patel's treatment notes dating from April 24 to October 21, 2003. In a note dated October 17, 2003, he advised that appellant could return to work with right upper extremity restrictions and a lifting limit of 10 pounds. In reports dated September 15 and October 17, 2003 and June 23, 2004, Dr. Alan D. Carr, a Board-certified osteopath specializing in anesthesiology, noted appellant's chief complaint of neck pain. He diagnosed cervical disc pathology and radiculopathy, based on MRI scan and EMG findings, and recommended epidural injections. In the latter report, Dr. Carr advised that appellant sustained a new injury on June 2, 2004 at work while pulling open a cabinet drawer. In an unsigned report dated September 24, 2003, Dr. Robert J. Ponzio, a Board-certified osteopath specializing in orthopedics, noted findings on examination and diagnosed residual right carpal tunnel syndrome and reported C5-7 disc herniations without physical findings or MRI scan findings and cervical strain and sprain. He found no permanent condition in the cervical spine and opined that appellant could return to work.³

The hearing was held on May 25, 2004. In a decision dated August 18, 2004, an Office hearing representative affirmed the October 9, 2003 decision. Appellant then filed an appeal with the Board, docketed as number 05-314. By order dated April 18, 2005, the Board remanded the case to the Office because the hearing transcript was missing from the record. Appellant thereafter submitted reports from Dr. Carr dated February 24 to June 3, 2005 in which he noted that he had not seen appellant since June 2004 and advised that she sustained a new work injury on February 17, 2005 lifting a file which caused pain in her neck and shoulder. Medication and physical therapy were recommended. The hearing transcript was associated with the case record. Appellant testified about her neck condition and that, following her carpal tunnel surgery in

³ Both Drs. Carr and Ponzio also reported findings regarding appellant's carpal tunnel syndrome.

April 2002, her physician returned her to full duty. She described her work duties and the August 23, 2002 employment injury. Counsel argued that the cervical disc herniations should be accepted as employment related and that Dr. Resnick's opinion was not fully rationalized. By decision dated August 22, 2005, the Office reissued the prior decision; affirming the termination of appellant's compensation effective October 9, 2003 due to the August 23, 2002 injury.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

Section 8123(a) of the Federal Employees' Compensation Act⁶ provides that, if there is 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 an examination.⁷ When the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁸

ANALYSIS -- ISSUE 1

In this case, the Office determined that a conflict in the medical evidence created between the opinions of appellant's treating internist, Dr. Patel, and Dr. Valentino, a Board-certified osteopath who provided a second opinion evaluation for the Office. The conflict arose as to whether appellant's accepted cervical strain of August 23, 2002 had resolved. The Office properly referred appellant to Dr. Resnick, a Board-certified orthopedic surgeon, for an impartial evaluation.⁹

The Board finds that Dr. Resnick's report is sufficiently well rationalized to establish that appellant's August 23, 2002 cervical strain resolved.¹⁰ Thus, the Office met its burden of proof to terminate appellant's compensation benefits effective October 9, 2003.¹¹ The cervical disc

⁴ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁵ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ 5 U.S.C. § 8123(a); *see Geraldine Foster*, 54 ECAB 435 (2003).

⁸ *Manuel Gill*, 52 ECAB 282 (2001).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Gloria J. Godfrey*, *supra* note 4.

herniations and degenerative disc disease, which were first demonstrated on MRI scan in June 2000 have not been accepted as employment related. Dr. Patel advised in an April 14, 2003 report that appellant's December 18, 2000 employment injury caused permanent damage to her cervical spine resulting in disc herniations and carpal tunnel syndrome and that this, in turn, was aggravated by the August 23, 2002 injury. However, Dr. Valentino reviewed the history of injury and, following examination diagnosed a resolved cervical strain. He noted the preexisting history of carpal tunnel syndrome and cervical disc herniations with degenerative changes and said these bore no relationship to the August 23, 2002 injury.

In a comprehensive report dated May 13, 2003, Dr. Resnick noted his review of the medical record including MRI scan findings of cervical disc herniations and degenerative disc disease dating back to June 2000. He advised that appellant's physical examination showed no objective residual physical impairment of the cervical spine which could be related to the August 23, 2002 work injury. Dr. Resnick opined that the cervical degenerative findings on appellant's MRI scans could produce subjective symptoms but that this preexisting condition was unrelated to the accepted injury. He concluded that appellant was capable of returning to her usual work, as residuals due to the accepted injury on August 23, 2002 had resolved.

Appellant submitted Dr. Patel's treatment notes. The Board has noted that, subsequently submitted reports of a physician on one side of a resolved conflict of medical opinion, are generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.¹² In a September 24, 2003 report, Dr. Ponzio advised that he found no permanent condition of the cervical spine and advised that appellant could return to work. On September 15, 2003 Dr. Carr merely noted appellant's complaint of neck pain and reported MRI scan and EMG findings. He provided no opinion regarding the August 23, 2002 work injury.

The Board notes that, contrary to appellant's contention that Dr. Resnick was provided with an improper medical history, the record indicates that the statement of accepted facts which was sent to by Dr. Resnick indicated that appellant had as accepted conditions right carpal tunnel and release.¹³ Further, Dr. Resnick addressed findings pertaining to her right wrist in his report. He noted a positive Tinel's test of the median nerve. However, the basis of the termination in this case was the cervical strain accepted in the August 23, 2002 injury. Dr. Resnick noted the diagnosis of carpal tunnel was based on appellant's military service, for which she was awarded a 10 percent service-connected disability. Following surgery in April 1, 2002, appellant had some residual pain but Dr. Resnick opined that the condition was not aggravated by the injury at work. The Board therefore finds the reports of Drs. Patel, Carr and Ponzio insufficient to overcome the weight accorded Dr. Resnick as the impartial medical specialist. The Office

¹² *Richard O'Brien*, 53 ECAB 234 (2001).

¹³ The issue in this case is whether appellant's employment-related strain that occurred on August 23, 2002 had resolved. Any claim for her employment-related carpal tunnel syndrome should be adjudicated under that accepted claim.

therefore met its burden of proof to terminate her compensation benefits effective October 9, 2003.¹⁴

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any continuing disability causally related to her August 23, 2002 injury.¹⁵ To establish a causal relationship, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.¹⁶ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁷ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant'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 claimant, 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 claimant.¹⁸

ANALYSIS -- ISSUE 2

The medical evidence submitted by appellant after the October 9, 2003 termination of benefits consists of Dr. Patel's October 17, 2003 note in which he opined that appellant could return to work with restrictions pertaining to the right upper extremity. As stated above, a subsequently submitted report of a physician on one side of a resolved conflict of medical opinion is generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.¹⁹ Dr. Patel did not state how the right upper extremity restrictions were related to the August 23, 2002 injury. In October 17, 2003 report, Dr. Carr merely reported findings on examination, and on June 23, 2004 reported that appellant sustained a new injury at work on June 2, 2004. In reports dated February 24, March 11, May 2 and June 3, 2005, the physician noted that appellant sustained an injury on February 17, 2005 and described her treatment regimen. None of these reports are relevant as to whether appellant has any continuing disability caused by her August 23, 2002 employment injury. The Board therefore finds that appellant submitted insufficient medical evidence to establish that she has residuals of the August 23, 2003 cervical strain.²⁰

¹⁴ *Manuel Gill, supra* note 8.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Donna L. Mims, 53 ECAB 730 (2002).*

¹⁸ *Leslie C. Moore, 52 ECAB 132 (2000); Victor J. Woodhams, 41 ECAB 345 (1989).*

¹⁹ *Richard O'Brien, supra* note 12.

²⁰ *Leslie C. Moore, supra* note 18.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective October 9, 2003. The Board further finds that appellant failed to meet her burden of proof to establish that she had any disability after October 9, 2003 causally related to her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 22, 2005 be affirmed.

Issued: April 12, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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