

duties with no restrictions on March 22, 2001. On April 18, 2001 appellant filed a claim alleging that she sustained a recurrence of disability on April 10, 2001. She stopped work on April 12, 2001. She returned to limited-duty work on April 19, 2001 for four hours a day. Appellant stopped work again on April 24, 2001 and has not returned.

By letter dated May 2, 2001, the Office accepted appellant's claim for a lumbar strain and authorized physical therapy through March 19, 2001. In a May 31, 2001 letter, the Office accepted that appellant sustained a recurrence of disability beginning April 11, 2001 and she received appropriate compensation for temporary total disability.

By letter dated February 20, 2004, the Office referred appellant, together with the case record, a statement of accepted facts and a list of questions, to Dr. Manhal A. Ghanma, a Board-certified orthopedic surgeon, for a second opinion medical examination. In a March 18, 2004 medical report, Dr. Ghanma provided a history of the February 19, 2001 employment injury and appellant's medical treatment. He provided a detailed review of the medical record. Dr. Ghanma reported essentially normal findings on physical examination and opined that there was no evidence of a lumbar strain or sprain present at that time. There was evidence of atrophy of the right thigh as compared to the left thigh with approximately three centimeters of difference in circumference which suggested radiculopathy. Dr. Ghanma stated that no other objective physical examination findings supported this diagnosis although appellant had significant pain complaints that clouded her examination picture. He opined that there was no objective evidence establishing that she had any continuing residuals of the February 19, 2001 employment injury and that her injury had resolved.

Dr. Ghanma addressed appellant's preexisting underlying degenerative disc disease at L5-S1 and stated that his current findings suggested a higher level of involvement than at the L5-S1 level. He opined that the accepted employment injury did not aggravate the preexisting degenerative disc disease in the lumbar spine at L5-S1. Dr. Ghanma further opined that, with respect to her lumbar spine strain/sprain condition, appellant was able to perform her regular work duties as a priority mail carrier, but noted that other findings of a nonorganic nature limited her ability to work based on her nonverifiable pain complaints and not on her physical defects. He related that further medical treatment was not necessary for the accepted condition but recommended a magnetic resonance imaging (MRI) scan to determine the current condition of appellant's lumbar spine. Dr. Ghanma wanted to see whether there was any evidence of a subsequent disc herniation that may be responsible for the atrophy in her right thigh or whether the atrophy was due to a lack of use rather than from nerve compression. He concluded that any findings of the lumbar spine would not be related to the employment injury but to subsequent events.

In a work capacity evaluation dated March 18, 2004, Dr. Ghanma stated that appellant could work eight hours a day with lifting restrictions. He indicated that she had complaints of pain that were not supported by objective findings of an MRI scan and nerve conduction velocity (NCV) and electromyogram (EMG) studies.

By letter dated April 6, 2004, the Office requested that Dr. James E. Toliver, an attending internist, review Dr. Ghanma's March 18, 2004 medical report and provide an opinion as to whether appellant's work-related lumbar sprain/strain had resolved. Dr. Toliver did not respond.

By letter dated May 12, 2004, the Office issued a notice of proposed termination of appellant's compensation based on Dr. Ghanma's March 18, 2004 report. The Office provided appellant 30 days in which to respond.

In statements dated May 27 and 28, 2004, appellant argued that she experienced continuing residuals and disability causally related to the February 19, 2001 employment injury. In a June 16, 2004 letter, she requested that the Office authorize her to change from Dr. Toliver to Dr. Jorge A. Martinez, a Board-certified internist, due to Dr. Toliver's failure to submit any medical reports.

By decision dated June 21, 2004, the Office terminated appellant's compensation effective that date. It found that the evidence of record was insufficient to establish that she had any continuing residuals or total disability causally related to the February 19, 2001 employment. The Office accorded determinative weight to Dr. Ghanma's March 18, 2004 second opinion medical report.

In a letter dated June 22, 2004, appellant, through her attorney, requested an oral hearing before an Office hearing representative. Dr. Martinez submitted a June 24, 2004 report which provided a history of appellant's February 19, 2001 employment injury and medical treatment. He noted the findings of a June 7, 2001 MRI scan of the lumbar spine and an October 10, 2001 MRI scan of the right hip. Dr. Martinez further noted appellant's complaints of severe lower back pain and agonizing muscle spasms in her lower back which radiated to both lower limbs and caused her to walk with a cane. He administered therapeutic nerve blocks which effectively treated her pain. Dr. Martinez stated that a surgical remedy could not be offered to appellant at that time but requested that the Office authorize additional therapeutic nerve blocks for her work-related injury.

On July 1, 2004 Dr. Martinez administered therapeutic nerve blocks and diagnosed disc desiccation and a bulging disc at L5-S1 and multilevel hypertrophy of the superior articulating facet joints.

Following the February 17, 2005 hearing, appellant submitted a May 18, 2005 report of Dr. James P. Dambrogio, a family practitioner. He found lumbosacral degenerative disc disease that was causally related to the February 19, 2001 employment injury and that she had severe loss of efficiency and mobility which limited her ability to perform daily activities.

By decision dated June 10, 2005, an Office hearing representative affirmed the June 21, 2004 termination decision. The hearing representative found that appellant no longer had any residuals or total disability due to her February 19, 2001 employment injury based on Dr. Ghanma's March 18, 2004 medical report.

In a letter dated June 17, 2005, appellant, through her attorney, requested reconsideration.

On August 30, 2005 the Office denied modification of the June 10, 2005 decision. The Office found that the evidence of record was insufficient to establish that she had any continuing residuals or total disability causally related to the accepted employment injury.¹

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³ If the Office, however, meets its burden of proof and properly terminates compensation, the burden for reinstating compensation benefits properly shifts to appellant.⁴ To prevail appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability, which continued after termination of compensation benefits.⁵

ANALYSIS

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits. In order to obtain a current assessment of appellant's condition, the Office referred appellant to Dr. Ghanma, an Office second opinion physician. Dr. Ghanma submitted a March 18, 2004 medical report in which he provided an accurate factual and medical background. He conducted a thorough medical examination which provided normal results. Dr. Ghanma opined that appellant had no objective residuals of the February 19, 2001 employment-related lumbosacral strain and that her preexisting degenerative disc disease at L5-S1 was not aggravated by the accepted employment injury although his current findings suggested a higher level of involvement than at the L5-S1 level. He further opined that she was able to perform her regular work duties as a priority mail carrier. Dr. Ghanma noted that other findings of a nonorganic nature limited her ability to work based on her nonverifiable pain complaints and not on her physical defects. He found that no further medical treatment was necessary for the accepted employment injury. Although he recommended an MRI scan of appellant's lumbar spine to determine whether a disc herniation was responsible for the atrophy in her right thigh, he stated that any findings of the lumbar spine would not be related to the employment injury but to subsequent events.

¹ The Board notes that, subsequent to the issuance of the August 30, 2005 decision, the Office received additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

³ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁴ *See Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

⁵ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

The Board finds that Dr. Ghanma's opinion is entitled to weight and establishes that appellant no longer has any residuals or disability due to her February 19, 2001 employment injury as it is sufficiently rationalized and based on a proper factual and medical background.

Dr. Martinez's June 24, 2004 report indicated that he administered therapeutic nerve blocks to treat appellant's continuing pain in her back and lower limbs. The Board finds that Dr. Martinez's report is insufficient to outweigh the probative value of Dr. Ghanma's March 18, 2004 report as it failed to address how appellant's symptoms were causally related to the February 19, 2001 employment injury and whether there was any resultant disability.

Dr. Dambrogio's May 18, 2005 report found that appellant's lumbosacral degenerative disc disease was causally related to the February 19, 2001 employment and that she had severe loss of efficiency and mobility which limited her ability to perform daily activities. Dr. Dambrogio did not explain how or why the diagnosed condition and appellant's disability were caused by the accepted employment injury. Therefore, the Board finds that his report does not outweigh the probative value of Dr. Ghanma's report.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective June 21, 2004 on the grounds that she no longer has any residuals or disability causally related to her February 19, 2001 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 30 and June 10, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 15, 2006
Washington, DC

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

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