



In order to determine appellant's current condition, the Office referred appellant for a second opinion examination with Dr. Allan R. Wilson, a Board-certified orthopedic surgeon. In a report dated August 3, 2001, Dr. Wilson stated that there was no reported soreness in the trapezius muscles and that appellant had normal motor strength. He asserted that appellant's trapezius strain had most likely resolved.

By decision dated December 21, 2001, the Office terminated appellant's compensation, finding that Dr. Wilson's opinion represented the weight of the medical evidence.

By letter dated January 15, 2002, appellant requested an oral hearing, which was held on September 25, 2002.

In a report dated January 23, 2002, Dr. Jennifer Carl, Board-certified in physical medicine and rehabilitation and a treating physician, diagnosed a cervicothoracic strain injury, lumbar spondylosis and underlying cervical spondylosis. She stated that appellant had returned to work since her last examination of January 11, 2002 but continued to experience cervicothoracic discomfort and stiffness and left lower extremity numbness when seated.

By decision dated December 12, 2002, an Office hearing representative affirmed the December 21, 2001 termination decision finding that the Office met its burden to terminate compensation. The Office hearing representative found, however, that Dr. Carl's January 11, 2002 report created a conflict in the medical evidence regarding whether appellant still had residuals from the October 2000 employment injury. The Office hearing representative remanded the case for referral to an impartial specialist to resolve the conflict in the medical evidence.

On remand, the Office referred appellant to Dr. Dean Ricketts, a Board-certified orthopedic surgeon, for an impartial examination. In a report dated March 18, 2003, Dr. Ricketts reviewed the medical records and the statement of accepted facts and listed findings on examination. He stated:

"It is my opinion that [appellant's] ongoing diffuse and ever expanding musculoskeletal complaints cannot be attributed at this time to the residuals of her industrial injury. The impact occurred while she was in a standing position and with the vehicle moving at no more than two [to] three miles per hour according to her history. This would produce a rather minimal force on the axial skeleton and be certainly less impressive than a standard whiplash injury in an automobile due to the difference in the physics of the mechanism.

"It is my opinion that residuals of her work injury have generally resolved. It is not possible to state in retrospect when the resolution would have occurred in as much as her symptoms have continued to increase over time on a subjective basis, in the absence of any significant objective findings. It would be my expectation that an injury of this type, which would certainly lead to temporary aggravation of her underlying degenerative conditions in the cervical and lumbar region, would resolve over a matter of months, perhaps six months post injury. The fact that she

is now complaining of symptoms in all four extremities and demonstrates some no physiologic responses suggests that her subjective complaints are not an accurate reflection of her underlying pathology.

“It is my opinion that her injury at work likely aggravated on a temporary basis her underlying degenerative change. It is my opinion that any ongoing symptoms at this time would be related to the underlying degenerative changes and in fact may have no physiologic basis at this time.

“It is impossible to state at what point the aggravation would have resolved but it is my opinion that generally in injuries [of] this type, these symptoms resolve within a matter of weeks or months, particularly considering the rather minimal impact involved.”

By decision dated April 11, 2003, the Office found that appellant had no continuing disability or impairment causally related to the October 13, 2000 employment injury. Dr. Ricketts’ referee opinion represented the weight of the medical evidence.

By letter dated April 23, 2003, appellant’s attorney requested an oral hearing, which was held on February 9, 2004. At the hearing, counsel contended that Dr. Ricketts’ report was not rationalized because it was not based on a complete and accurate history of the October 13, 2000 accident. Although Dr. Ricketts stated that the impact of the collision occurred while appellant’s vehicle was in a standing position with the striking vehicle moving at no more than two to three miles per hour, he underestimated the speed of the collision. Counsel contended that the tugger which struck appellant was actually traveling 5 to 10 miles per hour, not 2 to 3 miles per hour as stated in the report. Because the statement of facts did not mention the speed of the tugger at the moment of impact, Dr. Ricketts’ opinion was improper.

By decision dated May 10, 2004, an Office hearing representative set aside the April 11, 2003 decision and remanded the case for development regarding the issue of the speed of the postal tugger that hit appellant’s vehicle. The Office hearing representative instructed the Office to obtain the accident report in order to ascertain the tugger’s speed at the time of the collision. The Office hearing representative stated that if the vehicle speed was not indicated on the accident report, the employing establishment should provide an estimate of the average speed of the vehicle. The Office hearing representative instructed the Office to prepare a new statement of accepted facts stating the average speed of the vehicle and indicating the fact that the operator braked just prior to the accident. The Office hearing representative directed that the new amended statement of accepted facts be submitted to Dr. Ricketts to address the issue of whether appellant continued to have injury-related residuals.

On remand, the Office obtained the October 13, 2000 vehicle accident report. However, it did not mention the speed of the vehicle. In an email dated July 21, 2004, an employing establishment official stated that after speaking with several experienced, knowledgeable Powered Industrial Truck operators, he concluded that the vehicle’s top speed was five to six miles per hour if there was no load being towed and slightly less with a full load, with an average speed of three to four miles per hour. The estimate of average speed was more difficult to calculate and required the inclusion of other factors such as congestion, route and traffic. The

employing establishment also submitted a vehicle specification sheet from Taylor-Dunn, a trucking manufacturing firm, for a model E4-51 electric tow tractor; the same type vehicle which struck appellant's vehicle on the date of the accident. The specification sheet listed the speed of an E4-51 tractor as 6 miles per hour. The driver of the E4-51 submitted a handwritten statement dated July 26, 2004 in which he estimated his speed at the time of the accident as "medium."

The Office prepared an amended statement of amended facts indicating that the truck which struck appellant's vehicle was an electric tow tractor, model number E4-51, manufactured by Taylor-Dunn. This vehicle is also known as a tugger. The tugger operated at a maximum speed of five to six miles per hour, an average speed of three to four mile per hour and was traveling at medium speed at the time of the accident. The amended statement of accepted facts also indicated that the operator of the tugger stated that he was traveling at medium speed and that he did not apply the brakes on his tugger prior to impact. The amended statement of accepted facts was submitted to Dr. Ricketts for an opinion as to whether the operative speed of the tugger changed his opinion. In a supplemental report dated August 31, 2004, Dr. Ricketts stated:

"I have reviewed the amended statement of accepted facts regarding [appellant's] industrial injury. This does not alter the opinions as expressed in my original report with respect to [appellant's] conditions and their industrial relationship.

"At the time of our examination of March 18, 2003, [appellant] indicated that it was her opinion that the tugger which struck her was traveling at [two to three] miles an hour at the time of impact. Even if we consider the possibility that it was traveling [four] miles per hour, this does not alter my opinion as originally stated. All of the other opinions expressed in my initial report remain valid. Her initial injury appears to have been that of a cervical, dorsal and possibly lumbosacral strain with temporary aggravation of preexisting degenerative changes within the spine."

Dr. Ricketts reiterated that appellant sustained a temporary strain on October 13, 2000 which resolved within a few weeks. He noted that appellant was capable of performing the duties of a mail handler with restrictions limiting her to 20 pounds of lifting and 50 pounds of pushing with occasional bending, stooping and lifting, based upon preexisting degenerative change. Dr. Ricketts stated, however, that her restrictions were not related to residuals of the work injury. He concluded that appellant was capable of performing her preinjury job at the present time.

By decision dated October 8, 2004, the Office denied continuing compensation based on Dr. Ricketts' referee opinion, which represented the weight of the medical evidence. Appellant requested an oral hearing, which was held on May 17, 2005.

By decision dated August 4, 2005, an Office hearing representative affirmed the October 8, 2004 decision.

## LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>1</sup> Following a proper termination of compensation benefits, the burden of proof shifts back to the claimant to establish continuing employment-related disability.<sup>2</sup>

Section 8123(a) 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.<sup>3</sup> 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.<sup>4</sup>

## ANALYSIS

Once the Office terminated appellant's compensation in its December 21, 2001 decision, the burden of proof shifted to appellant to establish continuing employment-related disability.<sup>5</sup> Appellant submitted Dr. Carl's January 11, 2002 report. In a December 12, 2002 decision, the Office hearing representative found that Dr. Carl's report created a conflict in the medical evidence regarding whether appellant still experienced residuals from the October 13, 2000 work injury. The Office subsequently referred the case to Dr. Ricketts, the impartial medical examiner. He advised in a March 18, 2003 report that residuals of appellant's work injury had resolved. He stated that he could find no reason to explain why her symptoms continued to increase overtime on a subjective basis in the absence of any significant objective findings, as this type of soft tissue injury would be expected to resolve within six months. Dr. Ricketts stated that appellant's ongoing musculoskeletal complaints could not be attributed to the residuals of her October 2000 employment injury, as the impact occurred while she was in a standing position and with the vehicle moving at no more than two to three miles per hour. He advised that this would produce a rather minimal force on the axial skeleton and would have less of an impact than a standard whiplash injury in an automobile due to the difference in the physics of the mechanism. Dr. Ricketts concluded that appellant's October 2000 employment injury most likely was a temporary aggravated of her underlying degenerative changes and that any ongoing symptoms were most likely related to these underlying degenerative changes.

Appellant subsequently contended that Dr. Ricketts' report lacked probative value because it was not based on a complete and accurate history of the October 13, 2000 motor vehicle accident. By decision dated May 10, 2004, an Office hearing representative remanded

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<sup>1</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>2</sup> *John F. Glynn*, 53 ECAB 562 (2002).

<sup>3</sup> *Regina T. Pellecchia*, 53 ECAB 155 (2001).

<sup>4</sup> *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

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

the case for factual development regarding the issue of the speed of the postal tugger and an amended statement of accepted facts. The employing establishment subsequently established that the tugger which struck appellant's motor vehicle had a maximum speed of six miles per hour and was traveling at medium speed at the moment of impact. These documents were incorporated into an amended statement of accepted facts, which was referred to Dr. Ricketts.

In his August 31, 2004 supplemental report, Dr. Ricketts stated that his review of the amended statement of accepted facts did not alter his opinion that appellant did not have any current condition or residuals from the October 2000 work injury. He stated that, even if the tugger which struck appellant's vehicle was traveling four miles per hour instead of two to three miles per hour, this would not change his opinion. Dr. Ricketts noted that all of the physical findings and conclusions expressed in his March 18, 2003 initial report remained valid. He reiterated that appellant's initial injury was a cervical, dorsal and possibly lumbosacral strain with temporary aggravation of preexisting degenerative changes which resolved within a few months. Dr. Ricketts therefore concluded that appellant was probably capable of performing her preinjury job at the present time.

The Board finds that Dr. Ricketts' impartial opinion negates a causal relationship between appellant's continuing condition and disability related to her employment. The medical evidence establishes that appellant no longer has any residuals from her accepted October 2000 trapezoid strain injury. Dr. Ricketts noted that appellant sustained soft tissue strains that resolved within several months. His opinion is sufficiently probative, rationalized and based upon a proper factual background. Therefore, the Office properly accorded Dr. Ricketts' opinion the special weight of an impartial medical examiner.<sup>6</sup> The Board finds that Dr. Ricketts' opinion constitutes the weight of medical opinion and supports the Office's October 8, 2004 decision to deny continuing compensation based on the October 13, 2000 work injury.

Appellant's attorney argued at the hearing that Dr. Ricketts' supplemental August 31, 2004 report was not rationalized. However, appellant failed to submit any additional medical evidence to support this contention. The Office hearing representative therefore properly affirmed the denial of compensation.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish continuing disability.

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<sup>6</sup> Gary R. Seiber, 46 ECAB 215 (1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 4, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 24, 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