United States Department of Labor
Employees' Compensation Appeals Board

DONNA M. SZCZUREK, Appellant	)	
and	)	**Docket No. 06-248**
	)	**Issued: June 2, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Glenside, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 10, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated July 13, 2005, denying her claim for a recurrence of total disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a recurrence of total disability on November 1, 2002 causally related to her April 29, 2002 employment injury.

FACTUAL HISTORY

On April 29, 2002 appellant, then a 36-year-old letter carrier, filed a traumatic injury claim alleging that she injured her neck and shoulder while lifting a heavy bag on that date. The Office accepted her claim for shoulder, cervical and thoracic strains. After having returned to light duty, appellant filed a June 20, 2002 claim for a recurrence of disability, which was accepted by the Office.

On September 11, 2002 appellant was released by her attending physician, Dr. Richard Goldberg, a Board-certified physiatrist, to return to light duty for four hours per day. In notes dated September 11, 2002, Dr. Goldberg stated that appellant's extremities showed no signs of radiculopathy, her reflexes were normal and her strength appeared to be intact. He restricted appellant to performing sedentary activities, lifting no more than 10 pounds on an occasional basis, and no repetitive motions of the upper extremities. On October 28, 2002 appellant accepted a limited-duty position that encompassed her physician's restrictions and returned to work four hours per day. Appellant stopped working on November 1, 2002.

On November 8, 2002 appellant filed a claim for a recurrence of disability causally related to her April 29, 2002 employment injury, alleging that her "pain got 10 times worse when [she] went back to work." She claimed that she experienced a stiff neck, spasms in her upper shoulders, back, neck and upper arms beginning on her first day back at work.

In an unsigned note dated November 1, 2002, Dr. Goldberg indicated that appellant had significant right medial scapular border pain. Appellant submitted a disability certificate dated November 6, 2002 from Dr. Evelyn D. Witkin, a Board-certified orthopedic surgeon, who stated that appellant was incapacitated from November 1, 2002 until further notice, due to cervical radiculopathy and dorsal sprain.

The Office referred appellant, along with a statement of accepted facts and the entire medical record, to Dr. Steven Valentino, an osteopathic physician, for a second opinion examination. In a November 18, 2002 report, he opined that appellant was capable of returning to work in her preinjury position, without restriction, on a full-time basis. Dr. Valentino further opined that she had no physical limitations resulting from her work injury or from any preexisting condition. Based upon his neurological examination of appellant, objective findings were normal. Dr. Valentino provided impressions of resolved shoulder, cervical and thoracic strains. In a December 3, 2002 work capacity evaluation, he indicated that appellant was capable of performing her usual job with no limitations.

In a report dated November 25, 2002, Dr. Willet B. Neff, a chiropractor, stated that appellant complained of neck, trapezius and shoulder pain and diagnosed cervical, thoracic and sacroiliac subluxation and muscle spasms.

In a November 6 2002 report of her examination of appellant on that date, Dr. Witkin noted severe spasm of the right trap; extreme tenderness of the thoracic spine in the paralumbar and paracervical area; and early onset of adhesive capsulitis. Her report reflected both a positive compression test and a negative compression test.

Appellant submitted chiropractic records from Dr. Neff from November 2 through December 16, 2002 and physical therapy records from May 3 through December 4, 2002. A report of a magnetic resonance imaging (MRI) scan dated December 3, 2002 reflected impressions of disc herniations at C4-5, C5-6 and C6-7 without stenosis.

In a December 18, 2002 attending physician's report, Dr. Goldberg noted neck pain, somatic dysfunction, fibromyalgia and thoracic pain and opined that appellant could return to her sedentary job, provided that she be restricted from lifting more than 10 pounds. On January 6, 2003 Dr. Goldberg stated that he concurred with the opinion of Dr. Valentino and indicated that

appellant could return to work. On January 6, 2003 appellant advised the Office that Dr. Goldberg would no longer be her attending physician, stating that Dr. Witkin was her physician.

In a January 2, 2003 attending physician's report, Dr. Witkin diagnosed "herniated cervical dis[c] and cervical radiculopathy," stating that appellant's "work injury caused [the] problem." Dr. Witkin indicated that appellant was disabled from April 29, 2002 for an indefinite period.

On January 17, 2003 the Office issued a notice of proposed termination of medical and compensation benefits, based on the reports of Drs. Valentino and Goldberg. The Office advised appellant that she had 30 days to provide additional information and evidence.

Appellant submitted electromyogram (EMG) and nerve conduction studies dated January 3, 2003 from Dr. Michael Guthrie, a treating physician, who concluded that appellant had C4-5 nerve root irritation and radiculopathy on the right.

By decision dated January 17, 2003, the Office denied appellant's claim for recurrence of disability, finding that the evidence was insufficient to establish that she was unable to perform sedentary-duty work assigned as of October 28, 2002.

By letter dated January 24, 2003, Dr. Witkin opined that appellant had experienced a recurrence of disability as of October 28, 2002, indicating that she had stopped working on November 1, 2002 due to severe neck and arm pain. Dr. Witkin opined that appellant had not yet recovered from her April 29, 2002 work injury. In an unsigned letter dated February 14, 2003, Dr. Michael S. Yoon, a Board-certified neurological surgeon, provided an impression of right C5 radiculopathy, and in a February 18, 2003 attending physician's report opined that appellant was totally disabled from February 14 through April 14, 2003. He diagnosed herniated nucleus pulposus causing left-sided foraminal stenosis, and right-sided C5 radiculopathy. Dr. Yoon checked "yes" in response to the inquiry as to whether appellant's condition was caused by her employment and remarked that appellant's MRI scan showed small central disc herniations at C4-5 and small to moderate C6-7 disc herniations with left-sided foraminal stenosis.

By letter dated February, 27, 2003, the Office asked Dr. Goldberg to clarify whether he had referred appellant to a neurosurgeon and, if so, whether appellant's condition had changed since his January 6, 2003 report. By letter dated February 27, 2003, the Office asked Dr. Valentino to comment on a December 3, 2002 MRI scan report, a January 3, 2003 EMG report and a November 15, 2003 laboratory report. The Office specifically asked Dr. Valentino whether the aforementioned reports changed his opinion that appellant had no residuals or work limitations related to the April 29, 2002 work injury.

On February 24, 2003 appellant requested reconsideration of the Office's January 17, 2003 decision denying her claim for a recurrence of disability. Appellant claimed that her case was not a recurrence, but rather an ongoing injury since April 29, 2002.

Appellant submitted a January 23, 2003 report from Dr. Witkin, who stated that appellant was in extreme pain and had developed adhesive capsulitis. She further indicated that appellant was unable to tolerate the use of her right upper extremity even on light duty.

In a February 11, 2003 attending physician's medical update, Dr. Goldberg provided an illegible diagnosis and checked "no" when asked whether appellant could return to work. In a February 11, 2003 narrative report, Dr. Goldberg stated that, because he could not explain appellant's symptomology on the basis of objective findings on that date, he had suggested that she obtain the opinion of a neurosurgeon.

In a March 5, 2003 report, Dr. Valentino stated that his November 18, 2002 opinion that appellant had no residuals or work limitations related to the April 29, 2002 work injury, remained unchanged after reviewing the reports provided by the Office. He indicated that the December 3, 2002 MRI scan report of the cervical spine revealed small to moderate disc herniations at C4-7, which did not touch the cord or cause stenosis. Dr. Valentino reviewed Dr. Guthrie's January 3, 2003 EMG report, which reflected a normal neurological examination. He noted that Dr. Guthrie's finding of C4-5 nerve root irritation and radiculopathy on the right was inconsistent with a normal neurological examination and that the December 3, 2002 MRI scan showed no evidence of nerve root compression. Dr. Valentino reviewed laboratory reports from Warminster Hospital, a May 1, 2002 x-ray, the statement of accepted facts and a December 14, 2003 report from Dr. Yoon, who found that appellant had normal strength and gross sensation and denied numbness and tingling.

By decision dated March 10, 2003, the Office finalized the proposed termination of medical and compensation benefits effective March 20, 2003.

On March 26, 2003 appellant, by her representative, requested an oral hearing on the issue of termination.

Appellant submitted an April 16, 2003 report from Dr. Yoon, who indicated that a computerized tomography myelogram revealed mild blunting of C7-T1 nerve root sleeve, but no other significant abnormalities, and opined that appellant's pain was primarily musculoskeletal in nature and not neurological. Appellant also submitted an unsigned radiology report reflecting a normal alignment of flexion and extension.

In an April 24, 2003 report, Dr. Witkin stated that appellant's C5 radiculopathy continued to cause her difficulty and indicated that she had positive compression and distraction tests.

Appellant submitted a December 2, 2002 report from Dr. Jonathan W. McCullough, a chiropractor, who diagnosed cervical subluxation C5-6; thoracic subluxation T1-2, T5-6; glenonumeral subluxation of the right upper extremity; chronic cervicodorsal myofascitis; and cervical radiculopathy. Dr. McCullough opined that appellant was unable to work in her current condition.

In a June 16, 2003 report, Dr. Witkin opined that appellant's condition had worsened to the degree that she was unable to perform the duties of her light-duty job beginning November 1, 2002.

In a June 6, 2003 report, Dr. Neff contended that Dr. Valentino used selective findings to support his conclusions. He claimed that Dr. Valentino failed to mention appellant's right paracentral disc herniations at T8-9 that touches and deforms the cord, or the C4-5, C5-6 and C6-7 cervical disc herniations. Dr. Neff opined that on October 28, 2002 appellant's pain increased to a 7 out of 10, attributable to her return to light duty.

On August 12, 2003 appellant requested reconsideration of the January 17, 2003 decision denying her recurrence claim.

Appellant submitted a June 18, 2003 functional capacity evaluation signed by Michael Q. Guiliani, a physical therapist, reflecting the examiner's opinion that appellant was unable to return to normal working activity. In an August 27, 2003 letter, Dr. Neff opined that appellant was disabled and should not perform job-related duties. He stated that appellant should not sit for more than 45 minutes, stand for more than 1 hour, lift more than 15 pounds continuously, or perform any excessive pushing or pulling.

Appellant submitted a report dated September 4, 2003 from Dr. V. Theerasardi, a treating physician, who provided diagnoses of disc herniations at C4-5, C5-6, C6-7 and T8-9 by MRI scan and C4-5 radiculopathy; chronic pain; and adhesive capsulitis of the shoulders. He offered no opinion on appellant's ability to work. In an August 28, 2003 report, Dr. Witkin opined that appellant was unfit for duty due to weakness and continuous severe pain in her right upper extremity, severe spasm of the right medial rhomboid and right trap, hypoactive reflexes in the right upper extremity and severe loss of rotation to the right.

At the October 27, 2003 oral hearing, appellant's representative argued that Dr. Valentino failed to explain why appellant was able to return to her letter carrier job. Contending that a conflict existed between the opinions of Drs. Valentino and Witkin, the representative requested a referee medical examination.

By decision dated January 6, 2004, the Office hearing representative found that the case was not in posture for a decision. Finding that a conflict existed between the opinions of Drs. Valentino and Witkin, the decisions were reversed and the case remanded to the Office for an independent medical examination.

On remand, the Office referred appellant, together with the case record and statement of accepted facts, to Dr. Richard J. Mandel, a Board-certified osteopath, for an evaluation as to whether she had any residual disability or medical condition causally related to her April 29, 2002 employment injury. Specifically, Dr. Mandel was asked to report on whether appellant was totally incapacitated beginning November 1, 2002 as a result of the effects of her work-related injury and whether all effects of that injury had ceased.

In a report dated January 25, 2005, Dr. Mandel provided a history of appellant's condition and findings on physical examination. Based on his examination and review of the entire medical record, Dr. Mandel opined that appellant had no residuals of the April 29, 2002 injury; had fully recovered from the accepted injury; and could work for eight hours a day with no restrictions. Dr. Mandel found no objective abnormalities and no evidence that the accepted conditions were ongoing. On physical examination, Dr. Mandel stated that appellant had full range of motion of the hands and wrists and no tract signs. Neurologically, reflexes were hypoactive and symmetrical; light touch was normal at 2.83 over all fingertips; and provocative maneuvers for carpal tunnel syndrome and other peripheral neuropathies, as well as for thoracic outlet syndrome, were negative. Range of motion for the right shoulder was voluntarily limited to 95 degrees of flexion and 90 degrees of abduction, with full rotation. Regarding her left shoulder, appellant demonstrated 130 degrees of flexion and abduction and full rotation; cuff and deltoid strength was normal; and bicep and tricep strength was normal. Grip strength was 25, 25

and 20 pounds distally and 20, 25 and 20 pounds on the left. The cervical examination revealed a normal resting posture, with a range of motion of approximately 85 percent of normal. He noted no scapular winging and no spasms. Dr. Mandel concluded that it was "inconceivable that multiple herniations could have occurred simultaneously as a result of simply lifting a mailbag" and opined that the herniations reported by MRI scan were unrelated to the employment accident.

By letter dated April 28, 2004, the Office asked Dr. Mandel to clarify whether or not appellant was totally incapacitated beginning November 1, 2002 as a result of the effects of the work injury. Specifically, the Office inquired whether the evidence supported that appellant needed to stop working the four-hour per day light-duty job that she had just started on October 28, 2002.

Appellant submitted a May 7, 2004 report of an MRI scan of the cervical spine. In a May 13, 2004 report, Dr. Witkin indicated that appellant had a right shoulder hike and right trap spasm, with a positive compression and distraction test. She stated that range of motion was painful in the neck with rotation to the left and lateral tilt. An MRI scan of the spine revealed a central herniation at C6-7.

In a supplemental report dated May 25, 2004, Dr. Mandel stated, "In my opinion, appellant was not disabled as of November 1, 2002. She was capable of working on a full-time basis."

On June 15, 2004 the Office issued a notice of proposed termination of benefits based on Dr. Mandel's opinion. The Office advised appellant that she had 30 days to submit additional evidence and information.

By decision dated June 15, 2004, the Office denied appellant's claim for recurrence of disability, finding that the weight of the medical evidence, which was encompassed in Dr. Mandel's report, did not establish that she was disabled as of November 1, 2002.

On June 21, 2004 appellant, by her representative, requested an oral hearing on the June 15, 2004 decision denying her claim for recurrence of disability.

By decision dated July 20, 2004, the Office finalized the termination of appellant's medical and compensation benefits effective that date. On July 23, 2004 appellant, by her representative, requested an oral hearing on the July 20, 2004 decision terminating benefits.

Appellant submitted a March 9, 2005 report of an MRI scan of the cervical spine reflecting moderate disc herniation at C6-7 with cord compression and small disc herniation at C4-5.

At the April 6, 2005 hearing, appellant's representative argued that Dr. Mandel failed to address whether or not there was a material worsening of appellant's condition and did not give reasons why the findings on the MRI scan and EMG were not work related.

By decision dated July 13, 2005, the hearing representative affirmed the Office's June 15, 2004 decision denying appellant's recurrence claim.[1]

LEGAL PRECEDENT

When an employee who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and of showing that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[2]

The Board notes that the term disability, as used in the Federal Employees' Compensation Act, means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[3] Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[4] When the medical evidence establishes that the residuals of an employment injury are such that from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[5] Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[6]

Section 8123(a) of the 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.[7] 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.[8]

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[1] The Board notes that the July 13, 2005 decision did not address the termination issue. There is no evidence of record reflecting that the Office has acted on appellant's hearing request regarding the termination of benefits. As this matter is in an interlocutory posture, it is not before the Board on this appeal. *See* 20 C.F.R. § 501.2(c).

[2] *Terry R. Hedman*, 38 ECAB 222 (1986).

[3] *Patricia A. Keller*, 45 ECAB 278 (1993).

[4] *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

[5] *Clement Jay After Buffalo*, 45 ECAB 707 (1994).

[6] 20 C.F.R. § 10.5(x).

[7] 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

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

When the opinion of an impartial medical specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist fails to submit such a supplemental report or if the supplemental report is vague, speculative or lacks rationale, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question.[9] Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Act will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.[10]

ANALYSIS

The Board finds that the case is not in posture for a decision. On January 6, 2004 an Office hearing representative found that a conflict existed between the opinions of Drs. Valentino and Witkin, and remanded the case to the Office for an independent medical examination. The Office referred appellant to Dr. Mandel for an impartial medical examination to determine whether appellant was totally incapacitated beginning November 1, 2002 as a result of the effects of her work-related injury and whether all effects of that injury had ceased.

In a report dated March 30, 2004, Dr. Mandel provided a history of appellant's condition and detailed findings on physical examination. Based on his examination and review of the entire medical record, Dr. Mandel opined that appellant had no residuals of the April 29, 2002 injury; had fully recovered from the accepted injury; and could work for eight hours a day with no restrictions. He found no objective abnormalities and no evidence that the accepted conditions were ongoing. On physical examination, Dr. Mandel stated that appellant had full range of motion of the hands and wrists and no tract signs. Neurologically, reflexes were hypoactive and symmetrical; light touch was normal at 2.83 over all fingertips; and provocative maneuvers for carpal tunnel syndrome and other peripheral neuropathies, as well as for thoracic outlet syndrome, were negative. Range of motion for the right shoulder was voluntarily limited to 95 degrees of flexion and 90 degrees of abduction, with full rotation. Regarding her left shoulder, appellant demonstrated 130 degrees of flexion and abduction and full rotation; cuff and deltoid strength was normal; and bicep and tricep strength was normal. Grip strength was 25, 25 and 20 pounds distally and 20, 25 and 20 pounds on the left. The cervical examination revealed a normal resting posture, with a range of motion of approximately 85 percent of normal. He noted no scapular winging and no spasms. Dr. Mandel concluded that it was "inconceivable that multiple herniations could have occurred simultaneously as a result of simply lifting a mailbag" and opined that the herniations reported by MRI scan were unrelated to the employment accident. By letter dated April 28, 2004, the Office asked Dr. Mandel to clarify whether or not appellant was totally incapacitated beginning November 1, 2002 as a result of the effects of the work injury. Specifically, the Office inquired whether the evidence supported that appellant needed to stop working the four-hour per day light-duty job that she had just started on October 28, 2002. In a supplemental report dated May 25, 2004, Dr. Mandel stated, "In my

[9] *See Nathan L. Harrell*, 41 ECAB 402 (1990).

[10] *Harold Travis*, 30 ECAB 1071 (1979).

opinion, appellant was not disabled as of November 1, 2002. She was capable of working on a full-time basis."

Dr. Mandel's opinion regarding whether appellant sustained a recurrence of disability is not well rationalized and, therefore, fails to resolve the conflict between Drs. Valentino and Witkin. In his original report, Dr. Mandel failed to address the issue presented, namely, whether or not appellant was incapacitated beginning November 1, 2002. In his attempt to provide clarification, he opined without explanation that she was not disabled on that date and was capable of working on a full-time basis. The Board has consistently held that medical conclusions unsupported by rationale are of little probative value.[11] When 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 his original report.[12] Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Act will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.[13]

The Board will set aside the Office's July 13, 2005 decision and remand the case for a supplemental report from Dr. Mandel. If Dr. Mandel is unable or unwilling to clarify or elaborate on his opinion, or if his supplemental report is also vague, speculative or lacking in rationale, then the Office should refer appellant to a second impartial specialist.[14] After such further development of the medical evidence as may be necessary, the Office shall issue an appropriate final decision.

[11] *Willa M. Frazier*, 55 ECAB ___ (Docket No. 04-120, issued March 11, 2004).

[12] *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988); *Ramon K. Ferrin, Jr.*, 39 ECAB 736 (1988).

[13] *Roger W. Griffith*, 51 ECAB 491 (2000); *Harold Travis*, 30 ECAB 1071 (1979).

[14] Board case precedent provides that, when 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 his original report. Only when the impartial specialist is unable to clarify or elaborate on his original report or if his supplemental report is also vague, speculative or lacking in rationale, should the Office refer the claimant to a second impartial specialist. *Talmadge Miller*, 47 ECAB 673 (1996); *Harold Travis*, 30 ECAB 1071, 1078 (1979); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.0810(11)(c)(1)-(2) (April 1993).

CONCLUSION

The Board finds that the opinion of Dr. Mandel, the impartial medical specialist, requires clarification as to whether appellant sustained a recurrence of disability beginning November 1, 2002, causally related to the accepted April 29, 2002 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 13, 2005 is set aside and remanded for action consistent with this opinion.

Issued: June 2, 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