



position offered to appellant were within the medical restrictions provided by the impartial medical specialist, Dr. Arnold Illman, a Board-certified orthopedic surgeon. The Board found that the Office had properly denied authorization for a discogram and lumbar surgery, as Dr. Illman had opined that no further diagnostic tests were needed. The Board also affirmed a March 19, 2004 decision that denied merit review of the claim. The history of the case is provided in the Board's July 29, 2004 decision and is incorporated herein by reference.

Following the March 19, 2004 decision, appellant continued to submit reports from the attending orthopedic surgeons, Drs. Marc and Ira Chernoff. In reports commencing February 20, 2004, the physicians reiterated their opinion that appellant should have a discogram and lumbar fusion surgery.

On May 5, 2005 appellant requested reconsideration of her claim. She argued that the evidence showed she had sustained more than a low back strain and that the termination of benefits was improper. In a report dated January 15, 2005, Dr. Marc Chernoff provided a history and diagnosed disc herniations at L2-3 and L4-5, with degenerative disc disease. He stated that it continued to be his opinion that appellant was disabled due to the May 5, 2000 employment injury. In a report dated May 16, 2005, Dr. Ira Chernoff indicated that appellant had low back pain and would need a new magnetic resonance imaging (MRI) and a discogram.

By decision dated July 29, 2005, the Office reviewed the case on its merits and denied modification of its prior decisions. The Office found that the weight of the medical evidence remained with Dr. Illman regarding the medical issues involved.

#### **LEGAL PRECEDENT -- ISSUE 1**

As the Office met its burden of proof to terminate appellant's compensation based on her refusal of suitable work, the burden then shifted to appellant to show that her refusal to work in that position was justified.<sup>2</sup>

#### **ANALYSIS -- ISSUE 1**

The Board's July 29, 2004 decision found that the Office had properly terminated wage-loss compensation effective November 30, 2003 for refusal of suitable work in accord with 5 U.S.C. § 8106(a). The burden is on appellant to submit evidence showing that the refusal to accept the position was justified. She submitted medical reports from her attending physicians, Drs. Marc and Ira Chernoff, who reiterated their opinion that appellant was disabled. These physicians had been on one side of a conflict in the medical evidence that was resolved by Dr. Illman. Additional reports from a physician on one side of the conflict that is properly resolved by an impartial specialist are generally insufficient to overcome the weight accorded the impartial specialist's report or create a new conflict.<sup>3</sup> Dr. Marc Chernoff reiterated his prior opinion in a January 17, 2005 report that appellant was disabled from the employment injury, but this is not of sufficient probative value to create a new conflict. The weight of the evidence

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<sup>2</sup> *Ronald M. Jones*, 52 ECAB 190 (2000).

<sup>3</sup> *See Harrison Combs, Jr.*, 45 ECAB 716 (1994); *Dorothy Sidwell*, 41 ECAB 857 (1990).

remains with Dr. Illman, whose reasoned medical report was entitled to special weight.<sup>4</sup> Appellant did not meet his burden of proof and the Office properly denied modification.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8103(a) of the Federal Employees' Compensation Act provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.<sup>5</sup> The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>6</sup>

### **ANALYSIS -- ISSUE 2**

As the Board found in its July 29, 2004 decision, Dr. Illman provided a reasoned medical opinion with respect to the need for further diagnostic testing and his opinion was entitled to special weight as an impartial medical specialist. Although the attending physicians continued to request authorization for a discogram and lumbar surgery, this issue was resolved by Dr. Illman. As noted, additional reports from a physician on one side of the conflict that is properly resolved by an impartial specialist are generally insufficient overcome the weight accorded the impartial specialist's report or create a new conflict.<sup>7</sup> Appellant did not submit sufficient evidence to overcome the weight of the impartial medical specialists report. Accordingly, the Board finds that the Office properly denied modification of the denial of authorization for a discogram and lumbar fusion surgery.

### **CONCLUSION**

The Board finds that appellant did not establish that her refusal to work in the offered position was justified, and the Office properly denied authorization for discogram and lumbar fusion surgery.

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<sup>4</sup> As the Board noted in its prior decision, 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. *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>5</sup> 5 U.S.C. § 8103(a).

<sup>6</sup> *Francis H. Smith*, 46 ECAB 392 (1995); *Daniel J. Perea*, 42 ECAB 214 (1990).

<sup>7</sup> *Dorothy Sidwell*, *supra* note 3.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 29, 2005 is affirmed.

Issued: March 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