

FACTUAL HISTORY

On February 2, 2002 appellant, then a 56-year-old mail processor, filed a traumatic injury claim alleging that an all-purpose container hit her in the chest and both hands on that date. Appellant stopped work and returned to full-time limited duty on February 13, 2002. By letter dated May 13, 2002, the Office accepted appellant's claim for right shoulder and cervical sprains.

On May 16, 2002 appellant filed a claim alleging that she sustained a recurrence of disability (Form CA-2a) on May 5, 2002. She stopped work on May 5, 2002 and returned to work on May 8, 2002. In a May 28, 2002 letter, the employing establishment controverted the claim. By letter dated June 5, 2002, the Office advised appellant of the evidence needed to establish her claim. By decision dated July 9, 2002, the Office found that the evidence submitted by appellant was insufficient to establish that she sustained a recurrence of disability on May 5, 2002 causally related to the accepted February 2, 2002 employment injury. Accordingly, the Office denied her claim.

In a June 12, 2003 letter, the Office expanded the acceptance of appellant's claim to include a right hand sprain.

The Office received an August 20, 2003 medical treatment note of Dr. Rakesh Marwaha, an attending Board-certified internist, who found that appellant had a low back strain. He stated that she should not sit for a long time at one place and should get up and walk for a few minutes every half hour.

By letter dated September 3, 2003, the Office referred appellant, together with the case record, a statement of accepted facts and a list of questions, to Dr. Richard H. Sidell, Jr., a Board-certified orthopedic surgeon, for a second opinion medical examination.

Dr. Marwaha submitted an October 15, 2003 treatment notes, which found that appellant experienced chronic lumbar and cervical pain. He indicated that appellant missed work on September 24 and 26 and October 10, 2003 due to neck and back injuries. Dr. Marwaha stated that she was unable to work because her symptoms were exacerbated.

Dr. Sidell submitted an October 17, 2003 medical report which provided a history of appellant's February 2, 2002 employment injury and medical treatment. On physical examination, Dr. Sidell reported essentially normal findings with subjective complaints of neck pain and right forearm pain and swelling. He opined that appellant had recovered from all injuries as his examination revealed no objective medical findings. Dr. Sidell stated that, based on the natural history of soft tissue contusions, the initial injury probably resolved in 8 to 10 weeks, which was the usual time frame for soft tissue healing. Appellant was found medically capable of performing the physical requirements of her regular-duty position as a mail handler. Dr. Sidell stated that no further treatment was recommended. In an accompanying work capacity evaluation (Form OWCP-5), he indicated that appellant could work eight hours a day with no limitations.

The Office found a conflict between Dr. Marwaha and Dr. Sidell regarding the issue of whether appellant had any continuing residuals or disability causally related to her February 2, 2002 employment injury. By letter dated November 18, 2003, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions, to Dr. John J. Dwyer, a Board-certified orthopedic surgeon, for an impartial medical examination.

On October 30, 2003 appellant filed a Form CA-2a alleging that she sustained a recurrence of disability on September 24, 2003. She submitted an October 11, 2003 report from Dr. Shahid A. Ansari, a Board-certified surgeon, who provided findings on physical examination. He ruled out radiculopathy of the cervical and lumbar spines and diagnosed tendinitis and unusual swelling in the right wrist. In November 2003, he prescribed physical therapy for appellant's bilateral carpal tunnel syndrome three times a week for four to six weeks.

Dr. Dwyer submitted a December 16, 2003 report, which described appellant's February 2, 2002 employment injury and medical treatment. He noted her complaints of headaches, pain in the top of her right shoulder with shooting pain down the right arm to the hand and pain in both wrists with a knot on the right that swelled at times. His findings on physical examination included range of motions of the upper and lower extremities. He reviewed magnetic resonance imaging (MRI) scans of appellant's right wrist and lumbosacral and cervical spines, which were negative. He concluded that there was no objective evidence of disability or impairment regarding her cervical spine, right upper extremity, which included the right shoulder and wrist, left upper extremity, dorsal lumbosacral spine and both lower extremities. Dr. Dwyer diagnosed resolved soft tissue injuries to the right shoulder, wrist and cervical and lumbar spines. The date of resolution was not clear, but from the records reviewed, he determined that the appropriate date was on or about March 1, 2002. Dr. Dwyer noted that, although Dr. Marwaha's May 7, 2002 note released appellant to restricted work, he believed that she could return to unrestricted full-duty work as of that date. He concluded that she was fit to continue in or resume her normal occupational duties and daily living activities without restriction. Dr. Dwyer further concluded that there was no evidence of any permanent impairment that required any restrictions, other treatment or further diagnostic workup.

By decision dated January 21, 2004, the Office found that appellant failed to establish that she sustained a recurrence of disability beginning September 2003, causally related to the February 2, 2002 employment injury.¹

By letter dated January 28, 2004, the Office issued a notice of proposed termination of compensation based on Dr. Dwyer's December 16, 2003 medical report. The Office provided 30 days in which appellant could respond.

The Office received Dr. Ansari's November 26, 2003 and January 3, 2004 prescription for eight weeks of physical therapy.

¹ On January 26, 2004 the Office doubled appellant's traumatic injury claim assigned number 10-2008155 and recurrence claims assigned number 10-2027541 into a master claim file assigned number 10-2008155 as both claims involved the right upper extremity.

By letter dated February 26, 2004, appellant submitted medical evidence in response to the Office's proposed termination. In a February 6, 2004 medical report, Dr. Max L. Harris, a Board-certified internist, provided a history of the February 2, 2002 employment injury and medical treatment and reported his findings on physical examination. He diagnosed fibromyalgia syndrome and possibly discoid lupus in the scalp with a history of stress, depression and Graves' disease. Dr. Harris stated that he was unsure how much of the current symptomatology was related to the accepted employment injury. Appellant submitted prescriptions for physical therapy and follow-up medical appointments. Dr. Ansari's May 11, 2004 disability certificate revealed that appellant was unable to work on May 9, 2004 due to neck, back and right hand pain. In a May 15, 2004 duty status report, he released her to limited-duty work with restrictions.

By decision dated September 13, 2004, the Office terminated appellant's compensation effective September 1, 2004. It found that the evidence submitted was insufficient to establish that she remained totally disabled for work due to the February 2, 2002 employment injury and found Dr. Dwyer's impartial medical report to constitute the weight of medical opinion.

In a letter dated September 16, 2004, appellant requested an oral hearing before an Office hearing representative. She submitted the September 28, 2004 report of Dr. Jacob Salomon, a Board-certified surgeon, who provided findings on physical examination of her left neck, shoulder, elbow and wrist. He recommended objective testing to assess appellant's conditions. In an October 1, 2004 report, Dr. Salomon noted appellant's complaints of left shoulder, elbow and wrist pain, which was probably due to overuse and the repetitive nature of her work sorting mail. Dr. Salomon stated that overuse caused hypertrophy and swelling in her left upper extremity, wrist and elbow, which caused tendinitis in these areas. He opined that she sustained a repetitive-type injury that had occurred over the past eight weeks. Dr. Salomon stated that x-rays taken of the left shoulder wrist and elbow were negative for a fracture and arthritis. He recommended an electromyogram to rule out any peripheral neuropathies and noted appellant's treatment plan. Dr. Salomon concluded that her tendinitis was sustained separately from her previous work condition and was caused by repetitive use at work.

An MRI scan report dated November 3, 2003 of Dr. Aloyzas K. Pakalniskis, a Board-certified radiologist, found minimal degenerative changes at C5-6 and C6-7, a minimal posterior bulge of the C5-6 and C6-7 disc to the right of the midline with slight effacement of the right ventral subarachnoid space, but no significant impingement on the cervical cord or right lateral recess and no evidence of significant cervical central spinal stenosis.

Dr. Ansari's December 12, 2003 report indicated that, prior to the February 2, 2002 employment injury, appellant did not experience pain in her back, right thigh and wrist and neck which he was treating at that time. He noted that an MRI scan of the wrist was essentially negative and that probably a soft tissue injury and sprain of the right wrist was still bothering appellant. An MRI scan of the cervical spine showed a bulge and an MRI scan of the lumbar spine demonstrated protrusion of the disc between L2-3, which corresponded to appellant's pain radiating to the anterolateral side of the thigh to the knee. He concluded that her conditions were related to the February 2, 2002 employment injury.

Appellant submitted an August 29, 1997 job analysis report regarding a limited-duty mail clerk position and descriptions of her mail processor position and an optical character reader positions. An unsigned November 24, 2003 MRI scan report of Dr. Pakalniskis, was otherwise negative regarding the lumbosacral spine, but suspicious findings of a small far right lateral L2-3 disc herniation were noted.

In a December 29, 2004 note, Dr. Saloman noted that appellant should work with a plastic tub to relieve pain in her left arm and that this would also help her Lupus condition. Dr. Ansari's January 16, 2004 disability certificate indicated that appellant was unable to work on that date due to right shoulder and neck pain. In a November 20, 2004 letter, Dr. Salomon responded to an employing establishment nurse's inquiry as to whether appellant could perform limited-duty work. He stated that her restrictions should apply to both her right and left hands as she had overcompensated by using her left hand. Dr. Salomon indicated that she suffered from tendinitis in the left hand, which was being treated along with tendinitis in her left wrist and elbow and fibromyalgia. He opined that the accepted employment injury may have caused the problems on appellant's left side and fibromyalgia.

By decision dated June 16, 2005, an Office hearing representative affirmed the September 13, 2004 termination decision. The hearing representative found the evidence of record sufficient to establish that appellant was no longer totally disabled due to the February 2, 2002 employment injury based on Dr. Dwyer's December 16, 2003 impartial medical report. In a letter dated September 4, 2005, appellant requested reconsideration. She submitted Dr. Salomon's December 12, 2004. He stated that appellant should continue performing limited-duty work. Dr. Salomon diagnosed chronic right wrist and right shoulder pain and right cervical spondylosis with bulging discs that were aggravated by the February 2, 2002 employment injury, which created discogenic pain. Based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001) he determined that she had a 13 percent impairment of the right shoulder and an 11 percent impairment of the right wrist, which totaled a 23 percent impairment of the right upper extremity.²

On September 26, 2005 the Office denied modification on the grounds that the evidence she submitted was insufficient to establish that she had any continuing disability causally related to the February 2, 2002 employment 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.³ 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

² On December 18, 2004 appellant filed a claim for a schedule award. The Board notes that the record does not contain a decision issued by the Office regarding appellant's claim.

³ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

background.⁴ Furthermore, in situations where there are opposing medical reports of virtually equal weight and rationale and 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.⁵

ANALYSIS -- ISSUE 1

The Board notes that the Office properly determined that a conflict in the medical opinion evidence was created between Dr. Marwaha, an attending physician and Dr. Sidell, an Office referral physician, as to whether appellant had any continuing residuals or disability causally related to the February 2, 2002 employment-related sprains of the right shoulder and hand and cervical spine. Dr. Marwaha opined that appellant continued to suffer residuals and disability due to the February 2, 2002 employment injury. Dr. Sidell opined that her employment-related conditions had resolved and that she could work eight hours a day with no restrictions.

The Office referred appellant to Dr. Dwyer, selected as the impartial medical specialist. He found that no objective findings of disability or impairment relative to the accepted employment-related conditions of a right shoulder, hand and cervical sprain. After reviewing appellant's medical records, Dr. Dwyer opined that she was not currently disabled and that her employment-related conditions had resolved. He concluded that she was capable of returning to her date-of-injury job without any physical restrictions and that no other treatment was necessitated for the effects of the employment injuries.

The Board finds that Dr. Dwyer's opinion is entitled to special weight in finding that appellant no longer has any residuals or disability due to her February 2, 2002 employment injury as it is sufficiently rationalized and based on a proper factual and medical background.

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 disability causally related to her accepted injuries.⁶ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁷ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸ 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

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁵ *Gloria J. Godfrey*, *supra* note 3.

⁶ *See Manuel Gill*, 52 ECAB 282 (2001).

⁷ *Id.*

⁸ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

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.⁹

ANALYSIS -- ISSUE 2

The relevant medical evidence regarding any employment-related residuals and disability after September 1, 2004 includes a December 12, 2004 report in which Dr. Salomon found that appellant should continue performing limited-duty work. He diagnosed chronic right wrist and right shoulder pain and right cervical spondylosis with bulging discs that were aggravated by the February 2, 2002 employment injury, which created discogenic pain. Dr. Salomon also addressed impairment of the right upper extremity. Although he noted chronic right wrist and right shoulder pain which amounted to discogenic pain, pain is a general symptom, not a diagnosis and does not constitute a basis for payment of compensation.¹⁰ Dr. Salomon did not address how appellant's right cervical spondylosis and impairment of the right upper extremity were caused by the accepted employment injury. Thus, the Board finds that his report is insufficient to establish appellant's claim.

Dr. Salomon's November 20, 2004 reply to the employing establishment's nurse as to whether appellant was capable of performing limited duty was speculative in that he concluded that appellant's fibromyalgia and problems on her left side may have been caused by the accepted employment injuries. Dr. Ansari did not address the cause of appellant's disability in his January 16, 2004 disability certificate. Thus, these reports do not establish appellant's claim for continuing disability or residuals causally related to the February 2, 2002 employment injury.

As appellant has not submitted rationalized medical evidence establishing that she has any continuing residuals or disability causally related to her accepted employment-related conditions, she has not met her burden of proof.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective September 1, 2004 on the grounds that she no longer had any residuals or disability causally related to her February 2, 2002 employment injury. The Board further finds that appellant has failed to establish that she had any continuing employment-related residuals or disability after September 1, 2004.

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *See Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

ORDER

IT IS HEREBY ORDERED THAT the September 26 and June 16, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 13, 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