

**United States Department of Labor
Employees' Compensation Appeals Board**

J.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Richman, CA, Employer**

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**Docket No. 06-1060
Issued: November 22, 2006**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 3, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 20, 2005, which terminated her compensation benefits related to her accepted cervical strain condition.¹ Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ The Office's June 20, 2005 decision vacated that part of the August 23, 2004 decision terminating her compensation benefits related to her accepted conditions of left shoulder strain, bilateral carpal tunnel syndrome and lumbar strain. Accordingly, appellant's compensation benefits were retroactively reinstated effective March 21, 2004.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective March 21, 2004 for her accepted cervical strain²; and (2) whether appellant met her burden of proof to establish that she had any disability or residuals after March 21, 2004 causally related to her cervical condition.

FACTUAL HISTORY

On April 18, 1997 appellant, then a 54-year-old forklift driver, filed a claim for an injury sustained that day. She hurt her right foot, left arm and neck when a dumping machine operator prematurely lifted the container in which she had placed a postal pack in while she was operating a forklift. The Office assigned this file number 13-1131410 and accepted the conditions of a lumbar strain and a right ankle strain. Appellant returned to modified duty after the incident. The Office subsequently accepted a recurrence of disability due to a worsening of her condition. Appellant stopped work on May 21, 2002 and did not return.

The record reflects other injury claims filed by appellant. On November 29, 1999 she filed a notice of occupational disease claim for a carpal tunnel condition she attributed to her repetitive work duties. The Office assigned this file number 13-1204544 and accepted bilateral carpal tunnel syndrome. On May 24, 1999 appellant filed a claim for a recurrence of a December 26, 1989 injury due to a worsening of her condition. As new work factors were involved, the Office adjudicated the claim as a new injury and accepted a left shoulder strain under file number 13-1198165. On December 26, 1989 appellant was involved in an altercation with another employee. The Office assigned this file number 13-0908109 and accepted the conditions of left shoulder strain and cervical sprain.

In a March 14, 2003 report, Dr. Fred Blackwell, a Board-certified orthopedic surgeon, opined that appellant had a permanent disability from her accepted work injuries. The findings on clinical examination persisted and her response to treatment was poor. Dr. Blackwell stated that her left shoulder strain was a chronic recurrent condition. He noted that appellant declined surgical intervention for carpal tunnel disease. Authorization for physical therapy for appellant's back condition was requested.

The Office referred appellant, together with the medical record, a statement of accepted facts and a list of questions, to Dr. Thomas D. Schmitz, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated July 8, 2003, Dr. Schmitz noted appellant's complaints, the history of the work injuries and reviewed the medical records. He diagnosed lumbar strain, history of cervical strain, bilateral positive carpal tunnel syndromes with negative Tinel's sign, resolving left shoulder strain and mild obesity. He opined that appellant was able to work eight hours a day at modified duty in the rewrap area as a mail handler with restrictions. Appellant had normal lumbosacral and cervical spine findings, but exhibited left shoulder, lumbar spine and carpal tunnel findings, which required the work restrictions. Dr. Schmitz noted subjective findings to her neck and back pain. Objective findings included mild osteophytosis of

² The Office's August 23, 2004 decision stated that medical benefits were terminated effective March 16, 2004 and monetary benefits were terminated March 20, 2004.

the L5 and positive electromyogram (EMG) findings for bilateral carpal tunnel syndrome with a negative Tinel's result and positive Phalen's result. With respect to residuals of the accepted work injuries, Dr. Schmitz opined that appellant still had cervical and lumbar strains as well as carpal tunnel syndrome per EMG testing.³ Dr. Schmitz indicated that appellant could continue with physical therapy, undergo training by an athletic trainer one time per week or have a two-month gym membership to help with her conditioning.

In a letter dated August 19, 2003, the Office requested that Dr. Schmitz clarify his opinion on the causal relationship of appellant's diagnosed cervical condition. In a September 9, 2003 statement, he advised that the cervical strain, lumbar strain and shoulder strain were related to the work injuries by direct cause. He opined that the cervical strain was related to the 1990 work injury only and had resolved. He noted a negative EMG and a normal cervical magnetic resonance imaging (MRI) scan in 1991.⁴

In an October 1, 2003 report, Dr. Blackwell reviewed Dr. Schmitz' report and disagreed with his findings. Dr. Blackwell indicated that appellant had a positive Phalen's test, positive compression test at the wrist and that the most recent EMG/nerve conduction studies confirmed bilateral carpal tunnel syndrome, mild on the left and mild to moderate on the right. Dr. Blackwell stated that, although appellant's neck and back findings varied from examination to examination, there was sufficient clinical evidence to suggest more of an abnormality than Dr. Schmitz' suggested. He opined that appellant's current complaints were related to a chronic myofascial condition, which resulted from the accepted injuries and accounted for the severity of her complaints. Appellant's response to pain generators rendered her totally disabled.

The Office determined that a conflict in medical opinion arose between Dr. Blackwell and Dr. Schmitz with respect to appellant's ability to work and whether her cervical strain had resolved. It referred appellant, together with a statement of accepted facts and the medical record, to Dr. Clarence A. Boyd, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a January 2, 2004 report, Dr. Boyd provided a review of the medical record and findings on examination of appellant. He noted that there was no evidence of abnormal neurological findings in the lumbar spine, cervical spine, upper extremities (wrists, left shoulder) or lower extremities (right ankle). Examination of the cervical spine revealed normal ranges of motion. Dr. Boyd opined, based upon a normal examination and appellant's description of her symptoms, there were no findings consistent with an ongoing cervical strain. He found no subjective complaints or abnormal objective findings consistent with carpal tunnel syndrome. Dr. Boyd found a full range of motion of the cervical spine, lumbar spine, upper and lower extremities on examination. Dr. Boyd noted negative Tinel's and Phalen's signs, found no abnormal neurological findings consistent with carpal tunnel syndrome, indicated that

³ Dr. Schmitz originally opined that the cervical strain, lumbar strain and shoulder strain were related to the work-related injuries by direct cause. He later opined that appellant's cervical and upper back condition was not related to the December 1989 work injury.

⁴ As both the Office's questions and the record reflects that a cervical strain was accepted for a work injury of December 26, 1989, the Board concludes that Dr. Schmitz' reference to the 1990 work injury is referring to the December 26, 1989 accepted work injury.

appellant's symptoms were inconsistent with carpal tunnel syndrome and that the results of the prior EMG tests were inconsistent. He concluded that the examination findings and lack of noted symptoms consistent with carpal tunnel syndrome indicated that the condition no longer existed. Based on examination findings, Dr. Boyd also found that the right ankle sprain/strain, cervical strain and lumbar strain had fully resolved. Based on appellant's description of her symptoms and no consistent subjective or objective findings, that there were no continuing residuals of any of the accepted work injuries. He advised that he did not need continued medical treatment and that she could return to her full-time position as a mail handler equipment operator without restrictions.

On February 6, 2004 the Office issued a notice of proposed termination of compensation benefits, to which appellant responded in a March 5, 2004 letter. She contended that the Office had not found a conflict in medical opinion as to whether she had residuals of all her work injuries when she was referred to Dr. Boyd. She stated that the statement of accepted facts lacked pertinent information pertaining to her claims and Dr. Boyd should have performed diagnostic testing. Dr. Blackwell opined that appellant had ongoing problems which warranted treatment.

By decision dated March 16, 2004, the Office terminated appellant's compensation effective March 21, 2004 on the basis that the weight of the medical opinion evidence, as represented by Dr. Boyd, established that there were no objective residuals of her work-related injuries.⁵

On March 17, 2004 appellant disagreed with the Office's decision and requested a review of the written record. She reiterated her arguments pertaining to the Dr. Boyd's status as an impartial medical specialist. She submitted a copy of an undated nerve conduction study and a May 30, 2004 report from Dr. Robert R. Herrick, a Board-certified neurologist. He diagnosed bilateral carpal tunnel syndrome causally related to appellant's employment activities.

By decision dated August 23, 2004, an Office hearing representative affirmed the March 16, 2004 decision.

In a letter dated February 25, 2005, appellant requested reconsideration. She contended that the conflict presented to Dr. Boyd was solely related to the issue of whether she could return to work and not on the issue of her residual disability. She maintained that Dr. Boyd's opinion on matters outside the conflict statement should be considered that of a second opinion physician.

By decision dated June 20, 2005, the Office modified the March 16, 2004 decision terminating compensation. It affirmed the termination of her benefits as to the accepted cervical strain and set aside the termination related to her accepted conditions of left shoulder strain, bilateral carpal tunnel syndrome and lumbar strain. The Office found that the conflict in medical opinion referred to Dr. Boyd pertained to appellant's work capacity and residuals of her cervical sprain.

⁵ Compensation for medical benefits was terminated effective March 16, 2004 and monetary compensation was paid through March 20, 2004.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁶ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁷ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁸ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.⁹

Section 8123(a) provides in pertinent part: If there is a 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.¹⁰ 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.¹¹

ANALYSIS -- ISSUE 1

The Office properly found that a conflict arose in the medical opinion evidence between Dr. Blackwell appellant's physician and the second opinion physician, Dr. Schmitz, with regard to whether appellant had any continuing residuals or disability related to her accepted cervical condition. Dr. Schmitz opined that appellant's cervical strain condition had resolved and she could return to a full-time modified position with restrictions.¹² Dr. Blackwell disagreed that appellant's cervical condition had resolved and found that she remained totally disabled as a result of her work injuries. Accordingly, the Office referred appellant to Dr. Boyd to resolve the conflict.¹³

In a report dated January 2, 2004, Dr. Boyd provided a comprehensive review of the medical evidence and reported his findings upon examination. His examination of the cervical spine revealed no abnormal neurological findings and a full range of motion of the cervical

⁶ *Paul L. Stewart*, 54 ECAB 824 (2003).

⁷ *Elsie L. Price*, 54 ECAB 734 (2003).

⁸ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁹ *Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, *supra* note 8.

¹⁰ 5 U.S.C. § 8123(a).

¹¹ *See Roger Dingess*, 47 ECAB 123 (1995); *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

¹² He indicated that the restrictions were due to clinical findings on the left shoulder, lumbar spine and carpal tunnel.

¹³ *See* 5 U.S.C. § 8123(a).

spine. Based on his examination findings and appellant's description of her symptoms, Dr. Boyd opined that appellant no longer had residuals or disability due to her accepted cervical injury.

The Board finds that the Office properly relied on the impartial medical examiner's report in determining that appellant's accepted cervical injury had resolved. Dr. Boyd's opinion is sufficiently well rationalized and based upon a proper factual background. He did not only examine appellant, but also reviewed her medical records. He further explained that based on his examination findings, the work-related cervical spine strain had resolved.

Accordingly, the Office properly accorded special weight to the impartial medical examiner's findings. Dr. Blackwell's subsequent reports, prior to the termination, are insufficient to overcome the weight given the impartial medical specialist that the employment-related cervical condition had resolved without residuals. Dr. Blackwell essentially reiterated his earlier opinion that appellant's ongoing medical conditions warranted treatment and she remained totally disabled. The Board notes that Dr. Blackwell was one on side of the conflict giving rise to the referral to Dr. Boyd. His reports are not sufficient to overcome the weight given the opinion of the impartial specialist.¹⁴

The weight of the medical evidence establishes that appellant's accepted cervical condition has resolved. The Office properly terminated appellant's wage-loss compensation and medical benefits with respect to the cervical accepted strain.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating benefits shifts to appellant.¹⁵ In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment relationship between appellant's diagnosed condition and the implicated employment factors.¹⁶ The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.¹⁷

¹⁴ See *John D. Jackson* 55 ECAB 465 (2004).

¹⁵ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

¹⁶ *Juanita Pitts*, Docket No. 04-1527 (issued October 28, 2004).

¹⁷ *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS -- ISSUE 2

Subsequent to the Office's termination of benefits for the cervical strain, appellant submitted a May 30, 2004 report from Dr. Robert R. Herrick pertaining to her carpal tunnel condition and a nerve conduction study. This evidence, however, does not address whether appellant has any disability causally related to the accepted cervical strain of December 26, 1989. Thus, it is not relevant to the issue on appeal. Dr. Boyd, the impartial medical examiner, opined that appellant had no work-related disability as her cervical condition had resolved.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits for her accepted cervical strain effective March 21, 2004. Appellant failed to meet her burden of proof to establish that she had any employment-related disability or residuals of her cervical strain after March 21, 2004.

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board