

May 1, 2001. The employing establishment controverted the claim. The Office accepted appellant's claim for a lumbosacral sprain and paid appropriate compensation for injury-related disability for work.

Appellant treated with Dr. Scott Hodges, a Board-certified orthopedic surgeon, who submitted periodic reports in which he opined that appellant was unable to work due to her employment-related condition.

A July 22, 2002 magnetic resonance imaging (MRI) scan of the lumbar spine, read by Dr. Avinash Sud, Board-certified in nuclear medicine, revealed scoliosis and no evidence of thoracic spinal stenosis or nerve root foraminal stenosis in the thoracic spine.

In an October 19, 2004 report, Dr. Dennis Stohler, a Board-certified orthopedic surgeon and fitness-for-duty physician, indicated that appellant could return to work and prescribed restrictions. Appellant could only sit for 4 hours out of an 8-hour shift and should have frequent changes of position at 30 minutes. The lifting requirements were set at 15 pounds and Dr. Stohler advised no constant work in a prolonged or stooped manner.

In an October 21, 2004 report, Dr. Hodges indicated that appellant was off work permanently.

On February 10, 2005 the employing establishment provided a job analysis of a modified mail processing clerk position, which was offered to appellant.

On April 15, 2005 appellant refused the modified job offer and enclosed a report from Dr. Hodges. In an April 14, 2005 report, Dr. Hodges noted that he had reviewed a job offer which was presented to appellant. He did not believe that it complied with the restrictions outlined by Dr. Stohler. Dr. Hodges opined that it would not be in appellant's best interest to return to this job, as she would be placed at risk of a "repeat injury."

On May 11, 2005 the Office referred appellant for a second opinion, along with a statement of accepted facts, a set of questions and the medical record to Dr. Thomas M. Koenig, a Board-certified orthopedic surgeon.

In a June 13, 2005 report, Dr. Koenig noted appellant's history of injury and treatment. He conducted a physical examination and diagnosed right thoracic left lumbar scoliotic curve. Dr. Koenig determined that appellant did not have any midline tenderness or tenderness over the spinous processes. He also noted that she did have tenderness over the left posterior superior iliac spine bursa, but not the right. Dr. Koenig advised that appellant had true lumbar flexion of the ankle of 60 degrees and tolerated 25 degrees of extension and 25 degrees of lateral bending to the right of the midline, but only 20 degrees of lateral bending to the left of the midline. He also noted that appellant was bilaterally symmetrical in her musculature and reflexes. Dr. Koenig diagnosed chronic lumbosacral strain and a disc bulge and tiny disc protrusion without evidence of radiculopathy at L4-5 and L5-S1 attributed to the work-related injury of May 1, 2001. He also determined that appellant was overweight, had preexisting neglected adolescent idiopathic scoliosis, L4 to S1 posterior facet hypertrophy without evidence of foraminal stenosis and depression. Dr. Koenig opined that "the patient suffers from the preexisting condition of idiopathic (neglected) adolescence scoliosis." He opined that, if

appellant “had a preemployment physical, she would have had effectively the same restrictions as she currently has now.” Dr. Koenig opined that appellant had returned to a preinjury baseline and no longer had a disability or restrictions as a result of her employment injury.

On September 2, 2005 the Office referred appellant along with a statement of accepted facts and the medical record to Dr. William Kevin Bailey, Board-certified in physical medicine and rehabilitation, to resolve the medical conflict regarding appellant’s work tolerance limitations between Dr. Hodges, who opined that appellant should not return to work and Dr. Koenig, who opined that appellant had returned to her preinjury baseline and no longer had a work-related injury.²

In a report dated October 19, 2005, Dr. Bailey noted appellant’s history of injury and treatment. He found that appellant had underlying scoliosis prior to the injury and minor degenerative changes. Dr. Bailey noted that appellant had some myofascial pain since the injury but there were no objective findings. He indicated that it was “difficult to have objective findings from subjective complaints of pain” when he could not see anything on the MRI scans. Dr. Bailey opined that appellant’s underlying degenerative disc disease was not related to her injury but was preexisting, and advised that appellant had an aggravation of her underlying degenerative disc disease and scoliosis with myofascial complaints of pain. He determined that appellant had preexisting restrictions and that “she should not have been doing the lifting anyway.” Dr. Bailey explained that “preexisting restrictions are not secondary to this work-related injury.” He noted that the functional capacity evaluation indicated that appellant was capable of lifting anywhere from 15 to 20 pounds with decreased amount of expected prolonged stooping, standing, twisting and bending. Dr. Bailey indicated that, although these seem to be due to her complaints of pain, they are not necessarily due to her work-related injury from May 1, 2001. He advised that appellant was capable of the full-time modified mail processing clerk position and recommended continued conservative care, including good body mechanics, and ergonomics at work.

On November 30, 2005 the Office issued a notice of proposed termination of wage-loss compensation on the basis that the weight of the medical evidence, as represented by the report of Dr. Bailey, established her disability due to the work injury of May 1, 2001 had ceased.

In a December 28, 2005 letter, appellant disagreed with the proposed action. She referenced the report of Dr. Koenig and noted that he indicated that her condition was permanent. Appellant advised that she did not meet the job requirements of a “modified mail processing clerk.” She also indicated that Dr. Koenig agreed with her primary physician, and that she needed chronic pain management.

By decision dated January 20, 2006, the Office terminated appellant’s wage-loss compensation benefits effective January 22, 2006.³

² A previously scheduled examination, noted in an August 30, 2005 letter to Dr. Bailey, was rescheduled.

³ Appellant was advised that the decision did not terminate her medical benefits.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ 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.⁵

The Federal Employees' Compensation Act⁶ provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.⁷ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸

ANALYSIS -- ISSUE 1

The Office determined that a conflict of medical opinion existed regarding the nature and extent of any ongoing disability due to the work injury of May 1, 2001 based on the opinions of Dr. Hodges, appellant's physician, who supported an ongoing employment-related condition and disability and Dr. Koenig, a second opinion physician, who opined that the employment-related condition had resolved. The Office properly referred appellant to Dr. Bailey, Board-certified in physical medicine and rehabilitation, for an impartial medical examination to resolve the conflict.

In his October 19, 2005 report, Dr. Bailey noted examining appellant and that she had underlying scoliosis prior to the injury as well as minor degenerative changes. He determined that appellant had some myofascial pain since the injury but that she did not have any objective findings. Dr. Bailey explained that he did not see anything on the diagnostic tests results which included MRI scans. He noted that appellant did have an aggravation of her underlying degenerative disc disease and scoliosis with myofascial complaints of pain. Dr. Bailey noted that, prior to the injury, appellant had preexisting restrictions which were not secondary to the work-related injury. Furthermore, he noted that appellant's functional capacity evaluation indicated that she was capable of lifting anywhere from 15 to 20 pounds with decreased amount of expected prolonged stooping, standing, twisting and bending and opined that she was capable of performing the full-time modified mail processing clerk position. The Board finds that the Office properly relied on the impartial medical examiner's report in determining that appellant's accepted employment-related disability had resolved. Dr. Bailey's opinion is sufficiently well

⁴ *Curtis Hall*, 45 ECAB 316 (1994).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁶ 5 U.S.C. §§ 8101-8193, 8123(a).

⁷ 5 U.S.C. § 8123(a); *Shirley Steib*, 46 ECAB 309, 317 (1994).

⁸ *Manuel Gill*, 52 ECAB 282 (2001).

rationalized and based upon a proper factual background. He not only examined appellant but also reviewed her medical records. Dr. Bailey explained that, although appellant still had restrictions, they were attributable to her preexisting conditions and noted that there were no objective findings related to her accepted work-related injury.

As noted, above, 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.⁹ Accordingly, the Office properly accorded special weight to the impartial medical examiner's findings.

In response to the proposed notice of termination, appellant argued that she disagreed with the proposal and referred to reports in the record. However, she did not submit any additional medical evidence. Although she alleged that Dr. Koenig found her to be disabled, the Board notes that Dr. Koenig attributed ongoing disability to her preexisting condition, not her employment-related condition. In any event, Dr. Bailey resolved the medical conflict between Drs. Koenig and Hodges and, thereafter, appellant did not submit any new medical evidence that would overcome the special weight accorded to the impartial medical examiner.

As the weight of the medical evidence establishes that appellant's accepted work-related condition has resolved, the Office properly terminated appellant's wage-loss compensation.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation benefits effective January 22, 2006.

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 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