

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

M.P., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Cleveland, OH, Employer**

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**Docket No. 06-1429
Issued: November 24, 2006**

Appearances:
Alan J. Shapiro, 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 June 8, 2006 appellant filed a timely appeal of a May 19, 2006 decision of an Office of Workers' Compensation Programs' hearing representative, affirming a March 10, 2005 termination of compensation decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate compensation for wage-loss and medical benefits effective March 10, 2005 and (2) whether appellant has established a lumbar injury causally related to the January 28, 2004 employment injuries.

FACTUAL HISTORY

On February 2, 2004 appellant, then a 32-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that she sustained leg injuries as a result of a slip and fall on

January 28, 2004. Appellant stopped working on that day. The Office accepted the claim for right fibula fracture, right leg contusion and right ankle sprain.

In a report dated March 15, 2004, Dr. Clay Kelly, a physiatrist, indicated that appellant had back pain and he noted prior lumbar surgery in 1987. He diagnosed lumbar sprain.

The Office referred appellant, together with medical records and a statement of accepted facts, to Dr. Manhal Ghanma, an orthopedic surgeon. In a report dated May 3, 2004, Dr. Ghanma provided a history and results on examination. He opined that there were no continuing residuals from the accepted employment injuries. Dr. Ghanma stated that the fracture had healed, and no physical examination findings indicated an ankle sprain or right leg contusion. With respect to a lumbar injury, he opined that there were no objective findings to indicate that any work injury occurred to the lumbar spine on January 28, 2004. Dr. Ghanma noted that appellant had a preexisting back condition and there was insufficient medical documentation to establish a lumbar strain at the time of the January 28, 2004 employment injury.

An attending orthopedic surgeon, Dr. Bruce Cohn, related in a May 28, 2004 report that appellant was having pain in her back radiating down her leg. He stated that it was common for back problems “to be ignited and aggravated by ipsilateral and contralateral ankle injury, as is the case here with [appellant].” Dr. Cohn opined that the back condition was worse as a direct result of her employment accident. In a report dated June 9, 2004, he noted that x-rays revealed that the fibular fracture had healed.

In a report dated July 12, 2004, Dr. Kelly diagnosed lumbar sprain. He noted that appellant had preexisting L3-4 and L4-5 degenerative disc disease and stated: “Certainly she had a lumbar sprain when she hurt her ankle.”

The Office found that a conflict in the medical evidence existed and the case was referred to Dr. Ralph Kovach, a Board-certified orthopedic surgeon. In a report dated August 12, 2004, Dr. Kovach provided a history and results on examination. He indicated that he reviewed the medical evidence, noting that a magnetic resonance imaging (MRI) scan from May 2004 did not show any difference from a preinjury MRI scan from December 2003. Dr. Kovach further stated, “It is my opinion that [appellant] no longer shows evidence of a lumbar strain. Objective findings do not support the diagnosis of a lumbar strain. The global tenderness that [appellant] complained of in the lower back is not an objective indication that she has an existing strain which is still present and active. If she had a lumbar strain it is no longer present. My opinion is that [appellant] did not sustain a lumbar strain.” Dr. Kovach concluded that appellant could return to her date-of-injury position.

By letter dated December 20, 2004, the Office advised appellant that it proposed to terminate her compensation on the grounds that the medical evidence showed that her employment-related condition had resolved. By decision dated March 10, 2005, the Office terminated compensation for wage-loss and medical benefits.

Appellant requested an oral hearing before an Office hearing representative, which was held on March 22, 2006. By decision dated May 19, 2006, the Office hearing representative

affirmed the March 10, 2005 decision. The hearing representative found that the weight of the evidence rested with Dr. Kovach.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.² The right to medical benefits is not limited to the period of entitlement to disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.³

ANALYSIS -- ISSUE 1

The Board notes that the accepted conditions in this case were a right fibula fracture, right leg contusion and a right ankle sprain. With respect to these conditions, it is the Office's burden of proof to terminate compensation for wage-loss and medical benefits. There was no conflict in the medical evidence regarding the accepted conditions. The second opinion physician, Dr. Ghanma, opined that the accepted right leg conditions had resolved in his May 3, 2004 report, noting the results on physical examination. Dr. Cohn, an attending physician, did not disagree with Dr. Ghanma. He noted in a June 9, 2004 report that the fracture had healed. There is no probative evidence of any continuing residuals for the accepted right leg conditions after March 10, 2005. The Board accordingly finds that the Office met its burden of proof to terminate compensation benefits in this case.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of his or her claim, including that fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ Whether a particular injury causes an employee to be disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁶

The Act provides that, 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

¹ *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

² *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

³ *Frederick Justiniano*, 45 ECAB 491 (1994).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

a third physician who shall make the examination.⁷ The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁸

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.⁹

ANALYSIS -- ISSUE 2

With respect to a lumbar injury, it is appellant's burden of proof to establish a diagnosed condition, and any resulting disability for work, as causally related to federal employment. There was a conflict on the medical evidence between Dr. Ghanma and the attending physicians on this issue and the case was referred to Dr. Kovach. The referee examiner opined that appellant did not currently have evidence of a lumbar strain, nor did he believe that appellant had sustained a lumbar strain as a result of the employment injury. He noted the lack of objective evidence and the MRI scan results which showed no change in the degenerative condition from the preinjury MRI scan and the postinjury MRI scan. Dr. Kovach based his report on a complete background and provided an unequivocal opinion on the issues presented. The Board finds the opinion of Dr. Kovach is entitled to special weight and represents the weight of the medical evidence.

The weight of the medical evidence does not establish that appellant sustained a lumbar injury causally related to her January 28, 2004 employment injury. Appellant did not meet her burden of proof in this case.

CONCLUSION

The Office properly terminated compensation effective March 10, 2005 as the medical evidence established that the accepted employment-related conditions had resolved. Appellant did not establish a lumbar injury as causally related to the January 28, 2004 employment injuries.

⁷ 5 U.S.C. § 8123(a).

⁸ 20 C.F.R. § 10.321 (1999).

⁹ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 19, 2006 is affirmed.

Issued: November 24, 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