

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

T.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Long Beach, CA, Employer**

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**Docket No. 06-1324
Issued: April 12, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 24, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 14, 2006 denying modification of its termination of her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, 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 appellant's compensation benefits; and (2) whether appellant met her burden of proof to establish that she had any disability or medical condition causally related to her employment injuries.

FACTUAL HISTORY

On November 18, 1988 appellant, then a 33-year-old distribution clerk, filed a traumatic injury claim alleging that she sustained injuries to her upper and lower back while pushing a flat case. The Office accepted the claim for cervical strain, thoracic strain and bilateral ulnar nerve entrapment. Appellant underwent surgery for right ulnar nerve entrapment on February 2, 1990

and October 9, 2001 and left ulnar nerve entrapment on April 10, 2002. She stopped work on October 9, 2001. The record reflects that, although appellant was able to perform modified work in August 2002, the employing establishment was unable to accommodate her restrictions.

In a July 30, 2002 report, Dr. Michael Z. Kurtz, a family practitioner, diagnosed lumbosacral pain, thoracic pain and cervical pain and opined that appellant was totally disabled. He recommended osteopathic manipulation.

In an August 6, 2002 report, Dr. Vito J. Caruso, a hand surgeon, opined that appellant had left ulnar nerve entrapment and was temporarily partially disabled. He indicated that she was able to work modified duty with limitations.¹

In an August 22, 2002 report, Dr. Ghol Baham Ha'Eri, a Board-certified orthopedic surgeon and an Office referral physician, reviewed the statement of accepted facts and the medical evidence of file, noted the history of injury and presented his examination findings. He diagnosed work-related cervical and thoracic strain and bilateral ulnar nerve entrapment per the statement of accepted facts as well as nonwork-related multilevel disc degeneration and a left disc protrusion at C5-6. Based on a review of the medical records and his examination findings, Dr. Ha'Eri opined that appellant's neurological symptoms of the upper extremities were radicular symptoms due to her cervical radiculopathy and not due to ulnar nerve entrapment at the elbow and wrist level. Since appellant's symptoms persisted despite having had two operative procedures on the ulnar nerve on each upper extremity, Dr. Ha'Eri stated that this supports his opinion that she has radicular symptoms in her upper extremity caused by her nonwork-related cervical discopathy. Dr. Ha'Eri opined that appellant's work-related conditions have resolved and she reached a permanent and stationary impairment. He found no objective findings to support her constant slight bilateral wrist pain over the volar aspects. Dr. Ha'Eri opined that appellant's numbness of the fingertips of the first, second, third and fourth fingers of the left hand and the objective weakness of the left hand were due to her cervical discopathy. He opined that no further medical treatment was required for her cervical and thoracic strains, as they had resolved and that appellant had received sufficient physical therapy for her accepted ulnar nerve entrapment of the upper extremities. Dr. Ha'Eri noted that appellant may require further medical care for her nonindustrial condition of cervical discopathy. He advised that she was able to return to work with permanent physical limitations of no repetitive movements of the elbows, wrists and hands, no lifting, pulling or pushing over 10 pounds of weight and no repetitive head and neck turning or bending. Dr. Ha'Eri noted the limitation of no repetitive head and neck turning or bending were due to the nonindustrial cervical discopathy and the rest of the limitations were secondary to the bilateral upper extremity ulnar nerve entrapment.

In a September 10, 2002 report, Dr. Kurtz opined that appellant was totally disabled due to acute cervical sprain and acute lumbosacral sprain. He recommended trigger point injections.

In a letter dated September 23, 2002, the Office requested that Dr. Caruso respond to Dr. Ha'Eri's August 22, 2002 report. Dr. Caruso, however, continued to submit progress reports

¹ The limitations involved no repetitive standing/walking over 30 minutes in an hour and no repetitive use of hand over 30 minutes in an hour.

on appellant's condition, indicating that she was temporarily partially disabled. Updates on her restrictions were also provided.

The Office issued a notice of proposed termination of medical benefits on November 14, 2002 but later found that a conflict in medical opinion existed as to whether appellant had any residual disability from her work-related injuries. On January 10, 2003 the Office referred appellant, together with a statement of accepted facts and the entire case record, to Dr. Patrick A. Plunkett, a Board-certified orthopedic surgeon, for an impartial medical examination in order to resolve the conflict.

In a January 31, 2003 report, Dr. Plunkett reviewed the statement of accepted facts along with the medical evidence of record and presented his examination findings. He diagnosed malingering and chronic cervical strain syndrome. Dr. Plunkett found no atrophy or any evidence of neurological damage in either the right or left upper extremity. With regard to the elbow evaluation, he noted a full range of motion bilaterally of the shoulders, elbows, wrists and hands and disagreed that appellant had any level of documented pain. Dr. Plunkett noted that, although appellant had sensory loss to pinprick of the entire hand, this was "nonanatomic" and did not match any dermatome known to any orthopedic surgeon. He also noted that she refused to undergo any hand grasp strength testing, although there was no evidence of atrophy that would allow her not to have any squeezing of her hand during the grip strength. Dr. Plunkett opined that appellant's loss of grip strength was either because of her psychosomatic disease or because she was malingering. He noted that she injured herself while pushing a cart and advised that the progression of her pain pattern over the past 10 to 20 years had nothing to do with the extent of the original injury. Dr. Plunkett concluded that appellant's condition was permanent and stationary with no evidence of objective or subjective factors of disability. He opined that she could be released to work with no lifting more than 25 pounds and limited bending and stooping.

Additional reports from Dr. Kurtz diagnosed cervical, lumbosacral pain and/or thoracic pain and continued to find appellant totally disabled for work. Osteopathic manipulation or trigger point injections were recommended. Additional reports from Dr. Caruso continued to opine that appellant was temporarily partially disabled.

A conference held between the Office and the employing establishment on November 10, 2003 found that the physical requirements of the regular duties of a distribution clerk were within appellant's restrictions and available to her.²

By letter dated November 13, 2003, the Office advised appellant of its proposed termination of her benefits on the grounds that the weight of the medical evidence, as represented by the report of the impartial medical specialist, Dr. Plunkett, along with the Office referral specialist, Dr. Ha'Eri, established that she had no residuals from her work-related conditions or need for further medical treatment causally related to the November 18, 1988 work injury.

In a November 29, 2003 report, Dr. Kurtz disagreed with Dr. Plunkett's findings. He advised that appellant had problems with fine manipulation, which resulted in problems with fine

² Although appellant had been released to modified work part time, by her physician since August 2002, the employing establishment advised that it was unable to accommodate the work restrictions.

motor control, which was not ameliorated with her previous surgery. Dr. Kurtz also noted that appellant had complained that her physical therapy was not of proper length of time nor as intense as she would have required. Dr. Plunkett discussed her complaints and recommended that appellant would continue to benefit from pain management in the form of cervical epidural blocks to help relieve the pain and numbness to her left upper extremity. In a November 28, 2009 progress report, Dr. Kurtz opined that appellant was temporarily totally disabled due to cervical pain, lumbosacral pain and right shoulder pain and required injections.

In an October 21, 2003 report, Dr. Caruso opined that appellant had bilateral ulnar nerve entrapment at the elbow and was temporarily partially disabled. He stated that she required a transcutaneous electrical nerve stimulator unit.

By decision dated December 16, 2003, the Office terminated appellant's compensation benefits.³

In a January 6, 2004 letter, appellant disagreed with the Office's decision and requested an oral hearing that was held on July 27, 2004.

Progress reports from Dr. Kurtz continued to advise that appellant was totally disabled due to her cervical pain and lumbosacral pain and she required either osteopathic manipulations, trigger points or other physical therapy services. Progress reports from Dr. Caruso diagnosed bilateral ulnar nerve entrapment at the elbow and continued to opine that appellant was partially totally disabled. By decision dated October 18, 2004, an Office hearing representative affirmed the Office's December 16, 2003 decision.

In a letter dated October 18, 2005, appellant requested an "appeal." She advised that she had previously requested an appeal on July 2005.⁴ In a letter dated October 28, 2005, the Office asked appellant to clarify her appeal request. In a February 3, 2006 letter requesting reconsideration, she advised that she remained under doctor's care and had not been released.

The Office continued to receive additional medical progress reports from Dr. Kurtz and Dr. Caruso. In progress reports dated November 23 and December 11 and 21, 2004, Dr. Kurtz diagnosed cervical and lumbosacral pain and recommended either trigger point injections or osteopathic manipulation. In a January 15, 2005 report, he added additional diagnoses of thoracic and bilateral shoulder pain. In reports dated February 14 through August 26, 2005, Dr. Kurtz diagnosed acute cervical strain, thoracic strain and lumbosacral strain. In each progress report, he continued to opine that appellant was totally disabled.

In a March 3, 2005 report, Dr. Caruso diagnosed bilateral ulnar nerve entrapment at elbows, bilateral wrist tendinitis, cervical sprain and bilateral ulnar nerve entrapment at wrists and opined that appellant was temporarily totally disabled. He recommended physical therapy.

³ Medical benefits were terminated effective December 15, 2003. Wage-loss compensation benefits were terminated after December 27, 2003.

⁴ The record reflects that on July 26, 2005 the Office received a copy of its November 13, 2005 notice of proposed decision wherein appellant made a July 18, 2005 notation that she wished to appeal her case.

In earlier progress reports from May to December 2004, Dr. Caruso diagnosed either bilateral ulnar nerve entrapment and/or tendinitis and opined that appellant was partially disabled.

An April 29, 2004 electromyogram (EMG) report noted an abnormal study with moderately chronic bilateral T1 radiculopathy.

By decision dated March 14, 2006, the Office denied modification of its previous decisions.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁵ 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.⁶ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁷ 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.⁸

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.⁹ 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.¹⁰

ANALYSIS -- ISSUE 1

In this case, the Board finds that the Office properly referred appellant for an impartial medical evaluation with Dr. Plunkett to resolve the conflict in the medical record between her treating physicians, Dr. Caruso and Dr. Kurtz and Dr. Ha'Eri, the Office referral physician, with respect to whether appellant had any residual disability from her work-related injuries. Dr. Caruso and Dr. Kurtz were of the opinion that appellant had not recovered from her accepted conditions and still required medical treatment while Dr. Ha'Eri opined that appellant had no residuals from her accepted work-related conditions and required continuing medical treatment.

⁵ *Paul L. Stewart*, 54 ECAB 824 (2003).

⁶ *Elsie L. Price*, 54 ECAB 734 (2003).

⁷ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁸ *Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, *supra* note 7.

⁹ 5 U.S.C. § 8123(a).

¹⁰ *Glen E. Shriner*, 53 ECAB 165 (2001); *Roger Dingess*, 47 ECAB 123 (1995).

In a report dated January 31, 2003, Dr. Plunkett reviewed the evidence of record and reported his findings upon examination. He found no objective or subjective evidence to support appellant's complaints of pain. The evaluation of her upper extremities revealed no atrophy or evidence of neurological damage and full range of motion was exhibited bilaterally for the shoulders, elbows, wrists and hands. Dr. Plunkett opined that appellant was malingering and had chronic cervical strain syndrome as her pain pattern over the past 10 to 20 years had nothing to do with the extent of the original injury. Thus, he opined that appellant did not have any remaining residuals from her work-related conditions and she could be released to work with restrictions.

The Board finds that the Office properly relied on the impartial medical examiner's report in determining that appellant's accepted employment injury of cervical and thoracic strains and bilateral ulnar nerve entrapment had resolved. Dr. Plunkett's opinion is sufficiently well rationalized and based upon a proper factual background. He examined appellant, reviewed her medical records and found no objective findings related to the work injury. Dr. Plunkett properly explained that appellant's pain pattern had nothing to do with the extent of the original injury.

Accordingly, the Office properly accorded special weight to the impartial medical examiner's findings. Both Dr. Caruso's and Dr. Kurtz's subsequent reports, prior to the termination of benefits, were insufficient to overcome the weight given the impartial medical specialist that the employment-related injuries had resolved without residuals. Each physician essentially reiterated his earlier diagnoses and opined that appellant remained either partially or totally disabled and needed continuing medical treatment. The physicians did not provide a reasoned medical opinion on the issues of causal relationship or disability. While Dr. Kurtz advised that appellant continued to have problems with fine manipulation in his report of November 29, 2003, there is no indication in the record that her position as a distribution clerk required fine manipulation. Additionally, both Dr. Caruso and Dr. Kurtz were part of the original conflict in medical opinion and did not present any new findings or rationale to support their opinion.¹¹

As the weight of the medical evidence establishes that appellant's accepted work-related conditions have resolved, the Office properly terminated her compensation benefits.

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.¹² In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she

¹¹ See *Jaja K. Asaramo*, 55 ECAB ____ (Docket No. 03-1327, issued January 5, 2004) (submitting a report from a physician who was on one side of a medical conflict that an impartial specialist resolved is generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict).

¹² See *Joseph A. Brown, Jr.*, 55 ECAB ____ (Docket No. 04-376, issued, May 11, 2004); *Virginia Davis Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

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.¹³ 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.¹⁴

ANALYSIS -- ISSUE 2

Subsequent to the Office's termination of benefits, appellant maintained that she had not been released from medical care and submitted numerous progress reports from Dr. Caruso and Dr. Kurtz, which essentially reiterated earlier opinions that her continuing medical conditions render her either partially or totally disabled. As previously noted, it was Dr. Caruso and Dr. Kurtz's opinions which created the original conflict in the medical record. Their opinions have remained consistent with respect to appellant's capacity for work and, in some instances, have presented new diagnoses. However, as the physicians were on one side of the conflict resolved by Dr. Plunkett and they did not present new findings or rationale to support their opinion, their latter reports do not overcome or create a new conflict with Dr. Plunkett's impartial medical opinion that the work-related conditions have resolved and that appellant could return to work with limitations.¹⁵

While appellant also submitted an April 29, 2004 EMG report which reported a moderately chronic bilateral T1 radiculopathy. However, there was no discussion of the causal relationship between appellant's new condition and her accepted work injuries. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹⁶

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation benefits. The Board further finds that she failed to meet her burden of proof to establish that she had any employment-related disability or medical condition causally related to her November 18, 1988 work-related injury after the Office terminated her benefits.

¹³ *Juanita Pitts*, 56 ECAB ___ (Docket No. 04-1527, issued October 28, 2004).

¹⁴ *Bobbie F. Cowart*, 55 ECAB ___ (Docket No. 04-1416, issued September 30, 2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁵ See *Jaja K. Asaramo*, *supra* note 11.

¹⁶ *Conard Hightower*, 54 ECAB 796 (2003).

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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