



## **FACTUAL HISTORY**

Appellant, a 34-year old Christmas casual worker, filed a traumatic injury claim on December 16, 1999 alleging that on that date, she injured her right knee and low back when she was struck in the back by a tug towing a CNET “igloo” which knocked her into another tub causing her to fall on the ground thereby striking her right knee. The Office accepted appellant’s claim for right knee strain/contusion and low back strain.

Appellant received treatment from Dr. Ish A. Kahn, a Board-certified orthopedic surgeon, who on March 27, 2000 released her to her regular duties, noting that she suffered from a nonjob-related left knee problem. Dr. Kahn indicated on appellant’s work tolerance limitations form that the restrictions due to arthritis were nonwork related and that the effects of her injury had resolved.

By decision dated August 23, 2000, the Office terminated appellant’s compensation and medical benefits. In a decision dated April 12, 2001, the hearing representative affirmed the termination of benefits but remanded the case for further development of the evidence on the issue of compensation after the termination of benefits based on evidence submitted at the hearing.

Appellant began to see Dr. Joseph N. Saba, a Board-certified psychiatrist and neurologist, on June 20, 2000. At that time Dr. Saba assessed her with soft tissue injury to the low back solely as a result of the injury of December 16, 1999. He also noted a preexisting headache and neck condition, overweight state and injuries to her knees which were currently under the care of an orthopedic surgeon.

On June 29, 2001 the Office referred appellant to Dr. Robysina James, a Board-certified orthopedic surgeon, for a second opinion. In a medical report dated July 16, 2001, Dr. James found that, based on his review of the medical records and physical examination appellant’s back problem was not related to the work injury of December 16, 1999. He noted that there was nothing in the medical record indicating that she sought treatment for her back after her December 18, 1999 emergency room visit until 7 months later at which point appellant’s low back problem had resolved. Dr. James found that, upon examination of appellant’s right knee, the objective findings are patella-femoral arthritis and patella tendinitis. He opined that appellant’s right knee injuries were not related to her work injury and that her obesity was a predisposing factor for both chronic low back pain and knee pain.

In a report dated November 8, 2001, Dr. Saba stated that appellant had 100 percent disability because of her chronic pain syndrome resulting from the injury of December 16, 1999.

In a decision dated August 1, 2001, the Office denied appellant’s claim for continuing employment-related disability on the grounds that the medical evidence was insufficient to establish her claim. By decisions dated March 11, 2002 and April 3, 2003, the Office denied modification of its August 1, 2001 decision. By decision dated August 25, 2003, the Office determined that a conflict existed between the reports of appellant’s treating physician, Dr. Saba, and the second opinion physician, Dr. James, with regard to whether appellant had any continuing residuals from the December 16, 1999 employment injury and set aside Office

decisions dated August 1, 2001, March 11, 2002 and April 3, 2003. Accordingly, the Office referred appellant to an impartial medical examiner to resolve the conflict in opinions.

In a medical report dated May 7, 2002, Dr. Saba noted that, whereas appellant's obesity makes it harder for her to recover from soft tissue injuries, it is not the cause of her soft tissue injury. In a report dated August 25, 2003, he indicated that he explained to appellant that being overweight did not cause her back problem but would make it more difficult for her to recover from her injuries. Dr. Saba noted that on examination, appellant complained of pain radiating to her lower extremities, especially in the left. Appellant had sensory loss about the left L5 distribution and her left ankle jerk is depressed. Dr. Saba noted that she had tenderness in her low back. He further noted that the presence or absence of muscle spasm in the low back could not be determined as a result of the thickness of the subcutaneous tissues.

By letter dated September 8, 2003, the Office referred appellant to Dr. Harold H. Alexander, a Board-certified orthopedic surgeon, for an impartial medical examination in order to resolve the conflict regarding whether appellant had any continuing injury-related condition or disability. In a medical report dated September 25, 2003 Dr. Alexander stated:

“On the basis of the present findings, it would appear that [appellant] has had an acute lumbosacral sprain and contusion as the original injury and I believe this is for the most part resolved. Any pain that she is having now, likely is related to degenerative dis[c] disease and not related to the work injury. There are physically no objective findings on physical [relationship] to nerve root irritation. I do not believe any further studies are needed.

“In answer to the questions posed to the second opinion examiner: [Appellant's] current diagnosis of the right knee is likely mold chondromalacia and [degenerative disc disease] LS spine. These are not related to the work injury of [December 16, 1999]. [A magnetic resonance imaging] MRI [scan] of the spine and an MRI [scan] of the knee and physical exam[ination] reveal no evidence of nerve root compression, dis[c] herniation or internal derangement of her right knee.

“[Appellant] will continue to have residuals from her right knee strain and the contusion of her low back strain. There are no other nonwork[-]related conditions causing disability. There was one reference to arthritis in [appellant's] left knee, but I do not have x-rays of this. She does have excellent [range of motion] of her left knee without effusion or ligamentous instability. I have a feeling [that appellant] could return to a four[-]hour work week in a light[-]duty capacity and eventually over a two[-]month period, return to an eight[-]hour light[-]duty ]capacity. Beyond that, it would remain to be seen how she does. [Appellant] could work up to a moderate capacity, which she was doing previous to her injury.”

By letter dated October 15, 2003, the Office asked Dr. Alexander to clarify his September 25, 2003 report. In a report dated October 15, 2003, Dr. Alexander stated:

“Based on current objective evidence, [appellant] does not have residuals from the accepted work-related conditions of her right knee strained contusion and her low back strain. The pain she is having is treated in the next to last paragraph of my original note, is related to chondromalacia and degenerative dis[c] disease of her lumbosacral spine, preexisting conditions. I was in error when I stated [that appellant] will continue to have residuals from her right knee strain and contusion of her low back. It should have read that she will continue to have pain in her right knee and low back due to preexisting degenerative dis[c] disease and chondromalacia.”

In a medical report dated October 27, 2003, Dr. Saba assessed appellant with soft tissue injury to the low back, chronic cervical syndrome, chronic strain of the knee, chronic pain syndrome and morbid obesity.

On October 29, 2003 the Office proposed to terminate appellant’s wage-loss and medical compensation.

In a report dated November 6, 2003, Dr. Saba stated that appellant had a “significant bilateral disc herniation at the L4-5 level with a bias to the left and a right L5 radiculopathy.”

In a medical report dated November 21, 2003, Dr. William L. Yarde, reviewed appellant’s computerized axial tomography (CAT) scan of October 13, 2003 and assessed appellant with “lumbar radiculopathy secondary to herniated nucleus pulposus. He noted that most of appellant’s symptoms were in her right side and the CAT scan showed a left-sided lesion at two levels, that is L3-4 and L4-5.

On January 2, 2004 appellant requested reconsideration.

By decision dated January 6, 2004, the Office terminated appellant’s medical and wage-loss benefits effective that date. On January 12, 2004 appellant requested an oral hearing before an Office hearing representative. This was later changed to a request for review of the written record.

In a medical report dated January 29, 2004, Dr. Saba reiterated that “within a reasonable degree of medical certainty appellant’s injury to the low back that she suffered on the job is the cause of the disc herniation. He explained that her back was normal before December 16, 1999, that on December 16, 1999 when appellant was hit in the back, she twisted and was knocked down to the ground on her knees and went to southern regional where she received treatment. Dr. Saba noted that he had been treating appellant since June 2000 and had done numerous tests which showed disc herniations.

In a medical report dated March 15, 2004, Dr. Saba reiterated his opinion that appellant’s problems were related to her injury of December 1999 and that her disc herniation was post traumatic.

By decision dated May 31, 2005, the hearing representative affirmed the January 6, 2004 Office decision.

On May 16, 2006 appellant requested reconsideration.

In a May 11, 2006 affidavit answering questions, Dr. Saba confirmed that he began treating appellant on June 20, 2000 and was still treating her, that she has been diagnosed with bilateral disc herniations at L4-5 with right L5 radiculopathy and that her current injury to her lower back was causally related to her December 16, 1999 employment injury because appellant's low back was normal before that time. In an affidavit dated April 26, 2006, appellant stated that she was injured on the job on December 16, 1999 and that she was in constant pain in her low back with radiating pain down both legs, burning in both feet and tingling and burning in her toes. She also noted that she was experiencing problems with urination and balance as a result of her back problems. Appellant also stated that she was unable to sit or stand for any length of time.

By decision dated July 11, 2006, the Office denied modification of its January 6, 2004 decision on the basis that the evidence submitted was insufficient to establish the contention that the work-related medical condition had not resolved.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>1</sup> After it has determined that an employee has disability causally related to her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>2</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.<sup>3</sup>

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.<sup>4</sup>

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<sup>1</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>2</sup> *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>3</sup> *John F. Glynn*, 53 ECAB 562 (2002).

<sup>4</sup> *James P. Roberts*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

### **ANALYSIS -- ISSUE 1**

The Office accepted that appellant sustained a right knee strain/contusion and low back strain as a result of her December 16, 1999 injury. Therefore, it has the burden of proof to justify the termination of compensation and medical benefits for that condition. In this case, the Office terminated appellant's compensation and medical benefits based on the report of Dr. Alexander, the impartial medical examiner. The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Dr. Saba, appellant's treating physician, repeatedly indicated that appellant's low back condition was causally related to her December 16, 1999 employment injury. In his November 8, 2001 report, Dr. Saba indicated that appellant was 100 percent disabled due to her chronic pain syndrome resulting from the injury of December 16, 1999. However, Dr. James, the physician to whom the Office referred appellant for a second opinion, stated that appellant's back problem and condition in her right knee were not related to her work injury and that her obesity was a predisposing factor for both the chronic low back and knee pain. Due to the conflict between appellant's treating physician, Dr. Saba and the second opinion physician, Dr. James, with regard to whether appellant had any continuing residuals from the December 16, 1999 employment injury, the Office properly referred appellant to Dr. Alexander for an impartial medical opinion. In his medical report dated September 25, 2003, Dr. Alexander stated that appellant had an acute lumbosacral sprain and contusion from the original injury which he believed had now resolved. He opined that any pain she is having now is related to degenerative disc disease and not related to the work injury. Dr. Alexander also noted that appellant's current condition in her right knee, most likely mold chondromalacia, was not related to the work injury of December 16, 1999. In response to questions from the Office, in a supplemental report dated October 15, 2003, Dr. Alexander stated that appellant did not have residuals from the accepted work-related conditions of her right knee strained contusion or her low back strain and that any pain appellant was currently suffering was due to her chondromalacia and degenerative disc disease of her lumbosacral spine, preexisting conditions. Where a case is referred to an impartial medical examiner, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>5</sup> The Board finds that the special weight of the medical evidence is represented by the through, well-rationalized opinion of the impartial medical examiner, Dr. Alexander.

### **LEGAL PRECEDENT -- ISSUE 2**

If the Office meets its burden to terminate the claimant's compensation benefits, the burden shifts to appellant to establish that he had continuing disability causally related to his accepted employment injury.<sup>6</sup> To establish a causal relationship between the condition, as well as any disability claimed, and the employment injury, the claimant must submit rationalized medical opinion evidence based on a complete factual background, supporting such a causal relationship. 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 the

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<sup>5</sup> *Richard O'Brien*, 53 ECAB 234, 241-42 (2001).

<sup>6</sup> *Manuel Gill*, 52 ECAB 282 (2001); *George Servatas*, 43 ECAB 424, 430 (1992).

claimant's diagnosed condition and the 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>7</sup>

### **ANALYSIS -- ISSUE 2**

Dr. Saba's reports following the termination do not establish that appellant has continuing employment-related disability or residuals. He has not provided sufficient support for his opinion that the work injury caused or contributed to appellant's herniated lumbar discs in view of the fact that there was no diagnostic testing confirming this diagnosis until October 13, 2003. Moreover, Dr. Saba's conclusion that appellant's disc herniation was employment related because it was not in existence prior to the December 16, 1999 employment injury is of diminished probative value without more by way of an explanation as to how the mechanism of the employment injury caused the herniation.

As appellant has not presented any rationalized medical evidence establishing that she has continuing employment-related disability or residuals causally related to the December 16, 1999 employment injury, she has failed to meet her burden of proof.

### **CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective January 6, 2004. The Board further finds that appellant did not establish continuing disability or residuals causally related to the December 16, 1999 employment injury.

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<sup>7</sup> See *Connie Johns*, 44 ECAB 560 (1993).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 11, 2006 is affirmed.

Issued: April 16, 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