

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

B.W., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
TRANSPORTATION SAFETY
ADMINISTRATION, Houston, TX, Employer**

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**Docket No. 07-1022
Issued: August 7, 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

JURISDICTION

On March 6, 2007 appellant filed a timely appeal from September 20, 2006 and February 16, 2007 decisions of the Office of Workers' Compensation Programs, terminating her wage-loss and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

FACTUAL HISTORY

This case was previously before the Board. On September 21, 2006 the Board reversed Office decisions dated November 29, 2004 and April 12, 2005 which terminated appellant's

wage-loss compensation and medical benefits effective December 26, 2004.¹ The September 21, 2005 decision of the Board is herein incorporated by reference.

In reports dated April 21 to December 6, 2005, Dr. Rezik A. Saqer, an attending anesthesiologist and pain specialist, examined appellant for persistent pain in the lower back and sacroiliac area, primarily on the left side. The point of origin of the pain was the left sacroiliac joint and the pain was exacerbated by long periods of sitting. Dr. Saqer diagnosed a lumbar strain with radiculopathy on the left, left sacroiliitis, left lumbar facet arthropathy and myofascial pain syndrome.²

On November 10, 2005 the Office placed appellant back on the periodic compensation rolls effective December 26, 2005, following the Board's September 21, 2005 decision.

On December 6, 2005 the Office referred appellant, together with the case file and statement of accepted facts, to Dr. Larry L. Likover, a Board-certified orthopedic surgeon, for an examination and opinion as to whether she had any residual disability or medical condition causally related to her September 1, 2003 employment injury.

In an April 6, 2006 report, Dr. Likover provided findings on physical examination as follows:

“[Appellant] is noted to have full range of left shoulder motion. Specifically, there is full external rotation and internal rotation of the shoulder. Impingement signs are negative. Crossed chest maneuver for AC [acromioclavicular] joint inflammation is negative. Strength of the deltoid [muscle] is normal. There is no asynchrony. SLAP [acronym for ‘superior labrum anterior posterior’ -- a tear of the superior labrum of the shoulder] tests and labral tests are negative. There is no atrophy of the shoulder muscles.

“Examination of the low back reveals full range of lumbar motion. [Appellant] has full lumbar flexion and reverses lumbar lordosis normally. Lateral bending

¹ Docket No. 05-1482 (issued September 21, 2005). On December 31, 2003 appellant, then a 41-year-old passenger screener, filed a traumatic injury claim alleging that on September 1, 2003 she injured her back, legs and shoulders while lifting a heavy bag. The Office accepted her claim for a sprain and strain of the left arm and shoulder and displacement of a lumbar intervertebral disc without myelopathy. Appellant stopped work on December 29, 2003. The Office placed her on the periodic compensation rolls to receive compensation for temporary total disability. Due to a conflict in the medical opinion evidence between appellant's attending physician, Dr. Donna N. Canlas, and an Office referral physician, Dr. David G. Vanderweide, as to whether she continued to have residuals of her September 1, 2003 employment injury, the Office referred her to Dr. Frank L. Barnes, a Board-certified orthopedic surgeon, for an independent medical examination. In its September 21, 2005 decision, the Board found that Dr. Barnes' opinion was insufficient to resolve the medical opinion conflict.

² Appellant also submitted reports from Chiropractors Dr. Jack T. Barnett and Dr. Robert S. Francis. In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under 5 U.S.C. § 8101(2). A chiropractor is not considered a physician under the Federal Employees' Compensation Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist. *See Mary A. Ceglia*, 55 ECAB 626 (2004). Dr. Barnett and Dr. Francis did not diagnose a subluxation as shown on x-ray. Therefore, they are not considered physicians under the Act and their reports are of no probative value.

and extension are normal as well. Sitting straight leg raising is totally nonpainful. Knee jerk reflexes are symmetrical. Ankle jerk reflexes are symmetrical. [Appellant] has symmetrical strength of toe extensor, foot dorsiflexor, quadriceps, and toe flexor muscles. Hip rotation is normal. Pulses in the lower extremities are symmetrical. Supine straight leg raising is negative. Bent knee raising is negative. Sensory exam[ination] is unremarkable.

“MRI [magnetic resonance imaging] [scan] of the lumbar spine is completely normal.

“IMPRESSION: At this time, [appellant’s] ... injury consists of subjective complaints of diffuse left-sided body pain, as well as back pain, and shoulder pain. Clinical exam[ination] is completely normal. Diagnostic testing is completely normal.

“In my opinion, [appellant] has no sign of any ongoing problem or significant injury. She appears capable of returning to work without activity restriction. No further treatment is required. No impairment is present.”

On August 14, 2006 the Office advised appellant that it proposed to terminate her wage-loss compensation and medical benefits on the grounds that the weight of the medical evidence established that she had no residuals from her September 1, 2003 employment-related left arm and shoulder strain and sprain and disc displacement. Appellant responded that she disagreed with the proposed termination of her benefits because she still needed medical treatment for her employment injury.

By decision dated September 20, 2006, the Office terminated appellant’s wage-loss compensation and medical benefits effective September 3, 2006. On October 11, 2006 appellant requested a review of the written record.

On February 16, 2007 an Office hearing representative affirmed the September 20, 2006 termination decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.⁴ The Office’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To

³ *Barry Neutuch*, 54 ECAB 313 (2003); *Lawrence D. Price*, 47 ECAB 120 (1995).

⁴ *Id.*

⁵ *See Del K. Rykert*, 40 ECAB 284 (1988).

terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁶

Section 8123(a) of the Act provides that, “if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination.”⁷ Where 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.⁸

ANALYSIS

Appellant’s claim for an injury on September 1, 2003 was accepted for a sprain and strain of her left shoulder and arm and displacement of a lumbar intervertebral disc without myelopathy. Due to the conflict in the medical opinion evidence between Dr. Canlas and Dr. Vanderweide as to whether appellant had any continuing disability or medical condition causally related to her accepted conditions, the Office referred her to Dr. Likover for an independent medical examination.

Dr. Likover was provided with appellant’s case file and statement of accepted facts. His report is based on a complete and accurate factual and medical history. Dr. Likover provided findings on physical examination. Examination of appellant’s left shoulder revealed full range of motion. Impingement signs and the crossed chest maneuver for AC joint inflammation were negative. SLAP and labral tests were negative. Strength of the deltoid [muscle] was normal. There was no asynchrony. There was no atrophy of the shoulder muscles. Appellant had full range of motion of her lumbar back. Regarding her lower extremities, sitting and supine straight leg raising and bent knee raising were negative. Knee and ankle jerk reflexes were symmetrical. Appellant had symmetrical strength of toe extensor and flexor, foot dorsiflexor and quadriceps muscles. Hip rotation was normal. Pulses in the lower extremities were symmetrical. Sensory function was unremarkable. An MRI scan of appellant’s lumbar spine was normal. Appellant had subjective complaints of diffuse back and left-sided body pain. However, her clinical examination and objective testing were completely normal. Dr. Likover found that appellant could return to work without restrictions and no further treatment was required. The Board finds that Dr. Likover’s thorough and well-rationalized report is entitled to special weight. His report establishes that appellant has no continuing disability or medical condition causally related to her employment-related left shoulder and arm sprain and strain and lumbar disc displacement sustained on September 1, 2003. Therefore, the Office met its burden of proof in terminating appellant’s wage-loss compensation and medical benefits based on the medical opinion of Dr. Likover.

⁶ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

⁷ 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁸ *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

Dr. Saqer treated appellant for left sacroiliac joint pain between April and December 2005. He diagnosed a lumbar strain with radiculopathy on the left, left sacroiliitis, left lumbar facet arthropathy and myofascial pain syndrome. However, these are not accepted conditions in this case. Therefore, the reports of Dr. Saqer are not probative as to whether appellant has any residuals from her September 1, 2003 employment injury. Dr. Saqer's reports are not sufficient to create a new conflict with the report of Dr. Likover.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective September 3, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 16, 2007 and September 20, 2006 are affirmed.

Issued: August 7, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board