

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

---

**M.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Miami, FL, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 06-1929  
Issued: March 9, 2007**

*Appearances:*  
*Ron Watson, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 16, 2006 appellant, through her representative, filed a timely appeal from a June 28, 2006 merit decision of an Office of Workers' Compensation Programs' hearing representative, terminating her compensation and denying her claim for continuing disability. 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 properly terminated appellant's compensation for wage loss effective February 19, 2005 on the grounds that she no longer had any continuing residuals or disability causally related to her; and (2) whether she established that she had any continuing employment-related disability after February 19, 2005.

**FACTUAL HISTORY**

This case has previously been on appeal before the Board. In a May 2, 2001 decision, the Board found that appellant sustained an unexplained fall while in the performance of duty on

February 11, 1998.<sup>1</sup> The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. By letter dated May 29, 2001, the Office accepted appellant's claim for abrasion to the face, cervical, lumbar and right hip strains. Appellant performed limited-duty work intermittently until October 15, 2003 when she was sent home by Acting Postmaster Darrin Johnson because no work was available within her physical restrictions. She has not returned to work. On July 20, 2004 the Office accepted appellant's claim for cervical disc herniation.

By letter dated June 7, 2004, the Office requested that Dr. Paul Henrys, an attending Board-certified orthopedic surgeon, provide a medical opinion as to whether appellant had any continuing residuals or disability causally related to her accepted employment-related injuries. The Office advised him to submit the requested information within 30 days. Dr. Henrys did not respond within the allotted time period.

By letter dated September 7, 2004, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions, to Dr. Ismael Montane, a Board-certified orthopedic surgeon, for a second opinion medical examination. In an October 3, 2004 medical report, Dr. Montane reviewed the history of appellant's February 11, 1998 employment-related injury, medical treatment and social background. He reported essentially normal findings on physical, neurological and x-ray examination. Dr. Montane diagnosed cervical and lumbar radiculitis and arthritis of the right hip. He stated that the cervical and lumbar radiculitis were related to the accepted employment injuries but that they should have resolved within three months following the February 11, 1998 employment injury. Dr. Montane further stated that appellant's arthritis was not related to the employment injury, rather, it was related to aging, obesity and a genetic predisposition to developing the condition. He also stated that she may have sustained a sprained hip. Dr. Montane indicated that appellant's subjective complaints did not correspond to the objective findings. Appellant was capable of working full time with no restrictions and her work-related conditions did not require any further medical treatment. Dr. Montane stated that she only required anti-inflammatories for her right hip arthritis and maybe total hip replacement in the future, which was not a result of the accepted employment-related conditions. He opined that appellant did not have any continuing residuals of her accepted employment-related injuries. Dr. Montane explained that she had a normal physical and neurological examination and her x-ray results were consistent with a 60-year-old woman.

By letter dated December 6, 2004, the Office proposed to terminate appellant's compensation based on Dr. Montane's October 3, 2004 report. Appellant was provided 30 days to submit additional evidence or argument.

In reports dated November 21, 2001 to April 16, 2003, Dr. Felix A. Stanziola, a Board-certified orthopedic surgeon, noted that appellant sustained cervical and lumbar radiculitis and osteoarthritis of the right and left hip.

---

<sup>1</sup> Docket No. 00-1289 (issued May 2, 2001). On February 11, 1998 appellant, then a 53-year-old mail carrier, filed a traumatic injury claim alleging that on that date she hurt her nose, left hand, right leg and back when she fell while delivering mail.

On May 2, 2003 Dr. Richard E. Hernandez, a Board-certified internist, performed an esophagogastroduodenoscopy and diagnosed Grade 2 reflux esophagitis, a hiatal hernia, a schatzki ring and erosive gastritis. On May 3, 2003 Dr. Steven A. Simon, a Board-certified anatomical and clinical pathologist, performed a biopsy and found mild chronic gastritis, focal intestinal metaplasia and squamous and squamocolumnar mucosal fragments with chronic inflammation including the presence of eosinophils within the suamous mucosa consistent with reflux.

In a June 20, 2001 report, Dr. Jose L. Joy, a Board-certified neurologist, opined that appellant sustained herniated discs at C3-4 and C5-6 without signs of myelopathy and a herniated disc at L2-3 with right lumbar radiculopathy which remained stable since a previous evaluation.

In a May 5, 2004 note, Dr. Rosanna Buigas, a Board-certified internist, opined that appellant was disabled and that she could no longer perform any type of work. Her June 30, 2003 prescription note stated that appellant had gastroesophageal reflux disease (GERD).

Dr. Hernandez's April 16, 2003 report stated that appellant sustained epigastric pain that was most likely due to GERD.

In a February 4, 2002 report, Dr. Stanziola determined that appellant had a six percent impairment of the whole person based on her right hip condition utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*). His February 4, 2002 disability certificate provided the diagnoses of osteoarthritis of the left hip and lumbar radiculitis and stated that appellant could return to work with no restrictions. Dr. Stanziola's September 30, 2002 disability certificate reiterated that appellant had osteoarthritis of the left hip and stated that she could return to work with restrictions.

In a March 18, 2002 report, Dr. Henrys stated that appellant sustained herniated discogenic disease with radiculopathy and frequent giving out of her leg which contributed to her fall and resulted in a fracture of the right wrist. In a June 17, 2002 report, he opined that she was status post Colles' fracture of the right wrist with osteoarthritis of the right hip, lumbosacral spondylosis, cervical spondylosis, hypertensive cardiovascular disease by history and obesity. Dr. Henrys opined that appellant's maximum medical improvement of the cervical and lumbosacral spine and permanent impairment had been determined since March 2000. He rated a six percent impairment of the wrist which constituted a four percent impairment of the whole person according to the A.M.A., *Guides*. Dr. Henrys recommended total hip replacement arthroplasty due to osteoarthritis of her right hip. On January 10, 2005 he stated that appellant's work-related lumbosacral radiculitis and osteoarthritis of the right hip had not resolved.

In a December 18, 2004 report, Dr. David Gackstetter, a chiropractor, provided his x-ray findings of appellant's cervical and lumbar regions. A decrease in the disc space at C7 with possible narrowing of the neurological opening was noted. A decrease in the normal posterior disc space of L5 and S1 with subsequent narrowing of the opening of the neurological opening of S1 was also noted. Dr. Gackstetter stated that advanced stages of disc degeneration were present at the L1 and L2 levels. He noted that subluxations were present at C6, C7, T3, T7, T8, L4 and L5. Dr. Gackstetter diagnosed cervical and lumbar intervertebral disc syndrome, cervical nerve

root compression syndrome, thoracic nerve compression, lumbar radiculitis, right hip injury with degeneration and disc herniation at C3-4, C5-6 and L2-3. He opined that appellant was unable to perform any of her work duties.

Manuel E. Alvarez, Ph.D., a clinical psychologist, stated in a February 26, 2004 report that appellant sustained chronic pain disorder and adjustment disorder with mixed emotional features on Axis I.

By decision dated January 27, 2005, the Office finalized the termination of appellant's wage-loss compensation benefits effective February 19, 2005. It found that appellant no longer had disability causally related to her February 1998 employment-related injuries based on Dr. Montane's October 3, 2004 report. However, the Office did not terminate medical benefits.

In a January 27, 2005 report, Dr. Buigas stated that appellant continued to have severe cervical and lumbosacral discogenic disease with radiculopathy, bilateral arm numbness and pain and frequent leg pains following the February 11, 1998 employment injury. Her leg gave way on March 2, 2002, which resulted in an impacted comminuted fracture of the right distal radius. Dr. Buigas stated that appellant had been unable to return to work due to her injuries and that her problems were chronic and ongoing.

On March 9, 2005 the Office received a February 17, 2005 letter in which, appellant, through her representative, requested an oral hearing before an Office hearing representative. An April 7, 2005 form report from a physician whose signature is illegible stated that appellant sustained osteoarthritis of the right hip, lumbar and cervical radiculitis.

An August 22, 2005 magnetic resonance imaging (MRI) scan report from Dr. Abner M. Landry, a Board-certified radiologist, noted significant bilateral foraminal compromise at C6-7 secondary to a combination of facet hypertrophy and bilateral foraminal disc bulges and significant multilevel facet hypertrophy. An August 22, 2005 MRI scan of the thoracic spine was normal and August 22, 2005 MRI scan of the lumbar showed no evidence of focal disc herniation but mild multilevel facet hypertrophy was present.

In a December 5, 2005 report, Dr. Gustavo A. Torres, an orthopedic surgeon, stated that appellant had cervical and lumbar degenerative disc disease. His December 2005 disability certificate contained an illegible diagnosis and stated that appellant was disabled for work.

Progress notes dated December 16, 2005 from Carole Saint Phard and Carolyn Caldwell, registered nurses, addressed appellant's right wrist pain. On that date, Dr. Leon Adler, a radiologist, obtained an x-ray of appellant's right wrist which demonstrated degenerative changes involving the distal interphalangeal joint of the fifth finger with findings especially at the base of the distal phalanx. There was no evidence of fracture or dislocation.

At the April 25, 2006 hearing, appellant's representative requested a review of the written record.

In a March 17, 2006 disability certificate, Dr. Buigas indicated that appellant was permanently disabled due to a herniated disc at C3-4 and C5-6 and L2-3, severe right hip osteoarthritis, lumbar radiculitis and thoracic compressions.

An MRI scan of appellant's lumbar spine was performed on March 10, 2005 by Dr. Eric M. Godreau, a radiologist, who diagnosed muscle spasm, degenerative disc disease with intervertebral disc bulges at L2-3, L3-4, L4-5 and L5-S1. A March 10, 2005 MRI scan of appellant's cervical spine demonstrated muscle spasm, posterocentral osteophyte formation and disc herniation at C3-4 and intervertebral disc bulges at C4-5 and C5-6.

In a March 21, 2005 report, Dr. Jorge M. Cabrera, a Board-certified orthopedic surgeon, noted that appellant suffered from frontal headaches, cervical sprain, right cervical radiculitis, herniated disc at C3-4 with two bulging discs, lumbosacral sprain, lumbosacral degenerative disc disease, bilateral lumbar radiculitis and right hip arthritis. Dr. Cabrera ruled out osteoporosis and stated that she was status post right wrist fracture.

In a February 6, 2006 report, Dr. David E. Font-Rodriguez, a Board-certified orthopedic surgeon, stated that appellant had a healed right distal radius fracture malunion with resultant ulnocarpal abutment.

By decision dated June 28, 2006, an Office hearing representative affirmed the January 27, 2005 decision. The hearing representative found that the weight of the medical opinion evidence was represented by Dr. Montane's October 3, 2004 report which established that appellant no longer had any disability causally related to her February 11, 1998 employment-related injuries.

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

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>2</sup> It may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>3</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

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

In a report dated October 3, 2004, Dr. Montane, a second opinion Office referral physician, reviewed the evidence of record to determine the extent and degree of appellant's employment-related conditions and disability. He reported normal findings upon physical, neurological and x-ray examination. Dr. Montane diagnosed cervical and lumbar radiculitis, arthritis of the right hip and possibly a sprained hip. He noted that the cervical and lumbar radiculitis were related to the accepted employment injuries but that they would have resolved within three months after the February 11, 1998 employment injury. Dr. Montane stated that appellant's arthritis was not related to her employment injury but instead to aging, obesity and a

---

<sup>2</sup> See *Kathryn E. Demarsh*, 56 ECAB \_\_\_\_ (Docket No. 05-269, issued August 18, 2005); see also *Beverly Grimes*, 54 ECAB 543 (2003).

<sup>3</sup> *Id.*

<sup>4</sup> *James M. Frasher*, 53 ECAB 794 (2002).

genetic predisposition to developing the condition. Dr. Montane opined that appellant did not have any residuals of her employment-related conditions. He explained that her subjective complaints did not correspond with any objective findings that she had a normal physical and neurological examination and her x-ray results were consistent with a 60-year-old woman. Dr. Montane further opined that appellant was capable of working full time with no restrictions and she did not require any further treatment for her work-related injuries.

The Board finds that Dr. Montane's report is detailed, well rationalized and based upon a complete and accurate history. His opinion represents the weight of the medical evidence in finding that appellant no longer has any disability causally related to her employment-related abrasion to the face, cervical, lumbar and right hip strains and cervical disc herniation. The Board, therefore, finds that the Office met its burden of proof in this case.

The medical evidence submitted by appellant in response to the Office's proposed notice of termination is insufficient to overcome the weight accorded to Dr. Montane's report. Dr. Stanziola stated that appellant sustained cervical and lumbar radiculitis and osteoarthritis of the right and left hip. He estimated a six percent impairment of the whole person regarding her right hip based on the A.M.A., *Guides*. Dr. Stanziola's disability certificate indicated that appellant suffered from osteoarthritis of the left hip and lumbar radiculitis. He stated that appellant could return to work with no restrictions. In his September 30, 2002 disability certificate, Dr. Stanziola reiterated his diagnosis of osteoarthritis of the left hip and opined that she could return to work with restrictions. He failed to adequately explain how appellant's diagnosed conditions and disability were due to the February 11, 1998 employment injury.

Dr. Hernandez found that appellant sustained epigastric pain that was most likely due to GERD and his May 2, 2003 operative report stated that appellant sustained Grade 2 reflux esophagitis, a hiatal hernia, a schatzki ring and erosive gastritis. His report failed to address whether these diagnosed conditions and disability were causally related to the accepted employment injury.

On June 20, 2001 Dr. Joy opined that appellant sustained herniated nucleus pulposus at C3-4 and C5-6 without signs of myelopathy and herniated nucleus pulposus at L2-3 with right lumbar radiculopathy which remained stable since a previous evaluation. Dr. Henrys' March 18, 2002 report stated that appellant suffered from herniated discogenic disease with radiculopathy and frequent giving out of her leg which contributed to her fall and resulted in a fractured right wrist. In a June 17, 2002 report, he opined that appellant was status post Colles' fracture of the right wrist and she had osteoarthrosis of the right hip, lumbosacral spondylosis, cervical spondylosis, hypertensive cardiovascular disease by history and obesity. Dr. Henrys determined that she had a six percent impairment of the upper extremity which constituted a four percent impairment of the whole person based on the A.M.A., *Guides*. He recommended total hip replacement arthroplasty due to osteoarthritis of her right hip. Dr. Alvarez's February 26, 2004 report found that appellant suffered from chronic pain disorder and adjustment disorder with mixed emotional features on Axis I. The reports of Drs. Joy, Henrys and Alvarez failed to address whether appellant's diagnosed condition and permanent impairment were caused by the accepted employment-related injuries. These reports addressed conditions not accepted by the Office as employment related. Their probative value is further reduced and insufficient to support appellant's claims for continuing employment-related disability.

In a January 10, 2005 report, Dr. Henrys opined that appellant's work-related lumbosacral radiculitis and osteoarthritis of the right hip had not resolved. The Board notes that the Office has not accepted appellant's claim for these medical conditions and the burden of proof is on her to establish causal relationship. Dr. Henrys failed to provide sufficient medical rationale in support of his opinion on causal relation.

Dr. Buigas stated that appellant was disabled from performing any type of work. Her June 30, 2003 prescription note stated that appellant had GERD. However, he failed to provide any medical rationale explaining how or why appellant's disability and GERD were caused by the February 11, 1998 employment-related injury.

Dr. Gackstetter, a chiropractor, diagnosed cervical and lumbar intervertebral disc syndrome, cervical nerve root compression syndrome, thoracic nerve compression, lumbar radiculitis, right hip injury with degeneration and disc herniation at C3-4, C5-6 and L2-3. He also diagnosed subluxation at C6, C7, T3, T7, T8, L4 and L5 as demonstrated by x-ray. Dr. Gackstetter opined that appellant was unable to perform any of her job duties. As he diagnosed subluxation as demonstrated by x-ray, Dr. Gackstetter is a physician under the Federal Employees' Compensation Act.<sup>5</sup> However, he failed to provide medical rationale explaining how or why appellant's diagnosed conditions and resultant disability were caused by the accepted employment-related injury.

The unsigned report dated June 2001 has no probative value because it is not signed by a physician.<sup>6</sup> As the report lacks proper identification, the Board finds that it does not constitute probative medical evidence sufficient to establish that appellant has any continuing employment-related residuals and disability.<sup>7</sup>

### **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.<sup>8</sup> In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.

---

<sup>5</sup> 5 U.S.C. § 8101(2). Section 8101(2) of the Act provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>6</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>7</sup> *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, *supra* note 5 (reports not signed by a physician lack probative value).

<sup>8</sup> *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

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 the diagnosed condition and the implicated employment relationship between appellant's diagnosed condition and the implicated employment factors. 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.<sup>9</sup>

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

Subsequent to the Office's termination of benefits, appellant submitted medical evidence, including Dr. Buigas' January 27, 2005 report. Dr. Buigas stated that appellant continued to have severe cervical and lumbosacral discogenic disease with radiculopathy, bilateral arm numbness and pain and frequent leg pains following the February 11, 1998 employment injuries. She opined that, since appellant's problems were chronic and ongoing, appellant was entitled to disability. Dr. Buigas, however, did not provide any medical rationale explaining how or why appellant's diagnosed conditions and resultant disability were causally related to her accepted employment injuries.

In a March 17, 2006 disability certificate, Dr. Buigas opined that appellant was permanently disabled due to a herniated disc at C3-4 and C5-6 and L2-3, severe right hip osteoarthritis, lumbar radiculitis and thoracic compressions. She did not address whether appellant's disability and medical conditions were caused by the February 11, 1998 employment injuries.

In a December 5, 2005 report, Dr. Torres stated that appellant sustained cervical and lumbar degenerative disc disease. His December 2005 disability certificate contained an illegible diagnosis and stated that appellant was disabled for work. Dr. Torres failed to adequately explain how these diagnosed conditions and disability were caused by the accepted employment injury.

In a March 21, 2005 report, Dr. Cabrera opined that appellant experienced frontal headaches, cervical sprain, right cervical radiculitis, herniated disc at C3-4 with two bulging discs, lumbosacral sprain, lumbosacral degenerative disc disease, bilateral lumbar radiculitis and right hip arthritis and that she was status post right wrist fracture. Dr. Font-Rodriguez's February 6, 2006 report stated that appellant had a healed right distal radius fracture malunion with resultant ulnocarpal abutment. Neither Dr. Cabrera nor Dr. Font-Rodriguez addressed whether appellant's diagnosed conditions were caused by the February 11, 1998 employment-related injuries.

---

<sup>9</sup> *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The progress notes of Ms. Saint Phard and Ms. Caldwell, registered nurses, do not constitute probative medical evidence as a registered nurse is not considered to be a physician under the Act.<sup>10</sup>

Appellant did not submit sufficient rationalized medical evidence establishing that she has continuing disability causally related to her accepted abrasion to the face, cervical, lumbar and right hip strains and cervical disc herniation. She has not met her burden of proof.

### **CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation effective February 19, 2005 on the grounds that she no longer had any residuals or disability causally related to her employment-related abrasion to the face, cervical, lumbar and right hip strains and cervical disc herniation. The Board further finds that appellant has failed to establish that she had any continuing employment-related disability after February 19, 2005 causally related to the February 11, 1998 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 28, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 2007  
Washington, DC

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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

---

<sup>10</sup> 5 U.S.C. § 8101(2); see *Sheila A. Johnson*, 46 ECAB 323 (1994).