



## **FACTUAL HISTORY**

This case has previously been before the Board. In an August 8, 2006 decision, the Board affirmed the Office's July 14, 2005 decision which found that appellant did not sustain consequential injuries from her previously accepted condition and denied authorization for surgeries.<sup>1</sup> The Board, however, reversed the Office's December 23, 2004 decision which terminated appellant's wage-loss compensation effective December 26, 2004. The Board found that the Office did not meet its burden of proof as a conflict existed in the medical opinion evidence between Dr. Nelson H. Hendler, an attending Board-certified neurologist, and Dr. Robert F. Draper, an Office referral physician, as to whether she sustained any employment-related disability. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.<sup>2</sup>

By letter dated September 15, 2006, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Edward R. Cohen, a Board-certified orthopedic surgeon, for an impartial medical examination.

In an October 5, 2006 medical report, Dr. Cohen reviewed a history of appellant's July 31, 2001 employment injuries and medical treatment. On physical examination, he reported essentially normal findings with the exception of restricted range of motion of the neck and subjective tenderness to palpation from the mid-thoracic region down to the lumbar region. Dr. Cohen reviewed x-ray results which demonstrated degenerative changes in appellant's neck, back and left shoulder. He stated that appellant's cervical and left shoulder sprains had resolved. Dr. Cohen had preexisting degenerative cervical and lumbar disc disease and bilateral patellofemoral arthritis. Appellant also had arthritis of the bilateral acromioclavicular joints and a contusion of the left knee. Dr. Cohen opined that she had reached maximum medical improvement. He further opined that appellant did not have any residual impairment related to her July 31, 2001 employment injuries. Dr. Cohen stated that there was no evidence of any disruption or alteration to any anatomical structure as a result of the accepted employment injuries. He stated that, at most, she temporarily aggravated extensive preexisting conditions. Dr. Cohen opined that appellant had recovered from her accepted employment injuries. He related that her subjective complaints were associated with minimal objective findings that were consistent with the residuals of degenerative joint disease which was an ordinary disease of life. Dr. Cohen further related that appellant did not require any further medical treatment. He concluded that she could return to her preinjury position as a budget management officer.

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<sup>1</sup> Docket No. 05-1817 (issued August 8, 2006).

<sup>2</sup> On August 3, 2001 appellant, then a 56-year-old budget management officer, filed a traumatic injury claim alleging that on July 31, 2001 she hurt the left side of her head, hip, leg and shoulder when the driver of an employing establishment van turned the curve which caused the right side of a seat to come off its hinges and she fell into the left side of the van. By letter dated October 22, 2001, the Office accepted appellant's claim for left shoulder, lumbosacral and cervical spine strains. Subsequently, it accepted the claim for left hip strain, headache, contusion of the left knee and aggravation of preexisting degenerative disc disease and osteoarthritis. Appellant received appropriate compensation for total disability.

By letter dated November 15, 2006, the Office issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on Dr. Cohen's medical opinion. It provided 30 days in which she could respond to this notice.

In a decision dated December 21, 2006, the Office terminated appellant's wage-loss compensation and medical benefits effective that date. In a September 5, 2007 letter, appellant, through her attorney, requested reconsideration. Counsel contended that the Office erred in not expanding the acceptance of appellant's claim to include all the conditions she sustained as a result of the July 31, 2001 employment incident, which was supported by the medical evidence of record. He further contended that an accompanying February 14, 2007 report of Dr. Howard J. Hoffberg, a Board-certified physiatrist, established that appellant continued to be disabled due to the July 31, 2001 employment injuries. Counsel also contended that Dr. Cohen's October 5, 2006 report was of diminished probative value as it was not based on an accurate history with respect to the injuries and conditions appellant sustained due to the July 31, 2001 employment incident.

In the February 14, 2007 report, Dr. Hoffberg reviewed a history of appellant's July 31, 2001 employment injuries and medical treatment. He disagreed with Dr. Cohen's and Dr. Draper's opinion that her symptoms had resolved. Dr. Hoffberg stated that the record established that her continuing symptoms which included headaches, neck, shoulder, low back and buttock pain, tinnitus, disequilibrium, fatigue, weakness and acroparesthesias were causally and wholly related to her July 31, 2001 employment injuries. He further stated that appellant's preexisting bilateral knee pain and left knee symptoms were aggravated by the accepted employment injuries.

By decision dated October 22, 2007, the Office denied modification of the December 21, 2006 decision. It accorded special weight to Dr. Cohen's impartial medical opinion in finding that appellant no longer had any continuing residuals or disability causally related to the July 31, 2001 employment injuries.

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

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was 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>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>5</sup> To terminate authorization for medical treatment, the

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<sup>3</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>4</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>5</sup> *Pamela K. Guesford*, 53 ECAB 726, 728 (2002); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.

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>6</sup>

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

The Office terminated appellant's wage-loss compensation and medical benefits based on the special weight it accorded to the medical opinion of Dr. Cohen, an impartial medical specialist. In an October 5, 2006 report, he reviewed a history of appellant's July 31, 2001 employment injuries and medical treatment. Dr. Cohen listed no objective findings of residuals relative to the accepted July 31, 2001 employment-related left shoulder, hip and lumbosacral and cervical spine strains, headache, left knee contusion and aggravation of preexisting degenerative disc disease and osteoarthritis. He noted appellant's restricted range of motion of the cervical spine and tenderness to palpation from the mid-thoracic region down to the lumbar region. After reporting essentially normal findings on physical examination and reviewing appellant's medical records, Dr. Cohen opined that she had recovered from the accepted employment injuries. He stated that there was no evidence of any disruption or alteration to any anatomical structure as a result of the accepted employment injuries. Dr. Cohen further stated that at most, appellant temporarily aggravated extensive preexisting conditions. He explained that her subjective complaints were associated with minimal objective findings that were consistent with the residuals of degenerative joint disease which was an ordinary disease of life. Dr. Cohen stated that appellant did not require any further medical treatment and that she could resume working in her preinjury budget management officer position.

The Board finds that Dr. Cohen's October 5, 2006 opinion is based on a proper factual and medical background and is entitled to special weight. Based on his review of the case record and normal findings on physical examination, Dr. Cohen found that appellant did not have any residuals or disability causally related to her employment-related left shoulder, hip and lumbosacral and cervical spine strains, headache, left knee contusion and aggravation of preexisting degenerative disc disease and osteoarthritis. For this reason, Dr. Cohen's report constitutes the special weight of the medical opinion evidence afforded an impartial medical specialist. The Board, therefore, finds that the Office met its burden of proof to terminate appellant's compensation benefits effective December 21, 2006.

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

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to her accepted injury.<sup>7</sup> To establish a causal relationship between the condition, as well as any attendant

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<sup>6</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>7</sup> *See Manuel Gill*, 52 ECAB 282 (2001).

disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>8</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>9</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the 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.<sup>10</sup>

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

The Board finds that appellant did not establish that she had any continuing employment-related residuals or disability after December 21, 2006. Dr. Hoffberg's February 14, 2007 report stated that appellant's continued symptoms which included headaches, neck, shoulder, low back and buttock pain, tinnitus, disequilibrium, fatigue, weakness and acroparesthesias were causally and wholly related to her July 31, 2001 employment injury. He further stated that her preexisting bilateral knee pain and left knee symptoms were aggravated by the accepted employment injuries. However, Dr. Hoffberg did not provide any medical rationale explaining how or why appellant's residuals and current diagnosed conditions were caused by the accepted employment injuries.<sup>11</sup> The Board notes that the Office has not accepted appellant's claim for a buttock condition, tinnitus, disequilibrium, fatigue, weakness and acroparesthesias. Moreover, Dr. Hoffberg did not identify any period of total disability due to appellant's accepted employment-related injuries.

The Board finds that appellant did not submit sufficient rationalized medical evidence to substantiate that the claimed continuing residuals and disability on or after December 21, 2006 were causally related to her accepted employment-related injuries.

### **CONCLUSION**

The Board finds that the Office properly terminated appellant's wage-loss compensation and medical benefits effective December 21, 2006 on the grounds that she no longer had any residuals or disability causally related to her accepted July 31, 2001 employment injuries. The Board further finds that she failed to establish that she had any continuing employment-related residuals or disability after December 21, 2006.

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<sup>8</sup> *Id.*

<sup>9</sup> *Elizabeth Stanislav*, 49 ECAB 540 (1998).

<sup>10</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>11</sup> *A.D.*, 58 ECAB \_\_\_\_ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 22, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board