

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

S.A., Appellant)
and) Docket No. 08-1059
U.S. POSTAL SERVICE, CINCINNATI BULK) Issued: December 24, 2008
MAIL CENTER, Cincinnati, OH, Employer)

)

Appearances:

Alan J. Shapiro, Esq., 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 February 26, 2008 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated January 28, 2008 terminating 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.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits on the grounds that she had no disability or medical residuals related to her December 12, 2005 employment injury.

FACTUAL HISTORY

On March 6, 2002 appellant, then a 41-year-old mail handler, filed a traumatic injury claim alleging that she injured her back unloading a truck. She filed a notice of recurrence of disability on March 26, 2002 alleging that on March 20, 2002 she sustained a recurrence of total disability. On the reverse of the form, appellant's supervisor indicated that she had returned to

full duty following the alleged March 6, 2002 employment injury and began light-duty work on March 8, 2002. Appellant stopped work on March 9, 2002.

The Office accepted appellant's March 6, 2002 claim for a lumbar strain and trapezius/shoulder strain. On June 21, 2002 it accepted that she sustained a recurrence of total disability from March 20 through June 16, 2002, at which time she returned to limited duty. Appellant filed a second claim for recurrence of disability on July 11, 2002. The Office accepted this claim on September 16, 2002.

Appellant filed a claim for compensation on February 28, 2003 requesting wage-loss compensation beginning December 24, 2002. By decision dated April 23, 2003, the Office denied appellant's claim for a recurrence of disability beginning December 24, 2002. However, it accepted that she sustained a permanent aggravation of lumbar spondylolysis as a result of her work injury. On April 5, 2007 the Office accepted under the March 6, 2002 claim that appellant sustained myalgia and myositis. It also accepted that she sustained an aggravation of preexisting dysthymic disorder due to her March 6, 2002 work injuries.

Appellant filed a traumatic injury claim on December 12, 2005 alleging that she slipped on ice while in the performance of duty on that date injuring her left hand, arm, shoulder, back, neck and head. The Office accepted her claim for a left shoulder contusion, lumbar sprain/strain, cervical strain and back contusion. Appellant filed a recurrence of disability on May 22, 2006, alleging that on February 17, 2006 she sustained a recurrence of total disability. Dr. Marc C. Schneider, a Board-certified orthopedic surgeon, diagnosed cervical strain, back contusion, lumbar sprain and left shoulder contusion. He stated that as a result of appellant's employment-related fall she had sustained an aggravation of her underlying condition of lumbar spondylolysis and chronic cervical sprain/strain. Dr. Schneider stated that appellant was totally disabled to June 10, 2006 and could return to restricted duty at that time working only five to six hours a day.

The Office referred appellant for a second opinion evaluation on June 8, 2006 with Dr. E. Gregory Fisher, a Board-certified orthopedic surgeon. In a report dated July 14, 2006, Dr. Fisher reviewed appellant's history of injury and medical treatment for both accepted employment injuries. On physical examination, he found no muscle spasm in appellant's back or lower extremities, reduced range of motion of her cervical spine and limited range of motion of the left shoulder. Dr. Fisher stated that appellant's subjective findings of persistent neck and low back pain were similar to those she experienced before the December 12, 2005 employment injury. He opined that her chronic pain over the lumbar and neck areas were from her 2002 employment injury rather than the 2005 injury. Dr. Fisher opined that the accepted soft tissue injuries due to the 2005 injury would have healed with three months. He opined that appellant's 2005 injury temporarily aggravated her underlying conditions resulting from the 2002 injury. Appellant related to the physician that her pain was back to where it had been before the injury of December 12, 2005. Dr. Fisher found that appellant had no ongoing residuals from the 2005 injury. He advised that appellant was not capable of performing her job duties due to residuals of the 2002 injury. Dr. Fisher provided work restrictions of working two to four hours a day in a sedentary position with frequent breaks. He suggested that appellant walk one out of the four hours and that she avoid excessive bending, crawling, kneeling or stooping. Dr. Fisher recommended that she lift no more than 20 pounds occasionally and 15 pounds frequently.

In a report dated July 10, 2006, Dr. Schneider noted appellant's December 12, 2005 employment injury and stated that she had been disabled since that injury. He noted that appellant could return to light-duty work with restrictions on June 28, 2006.

On September 18, 2006 the Office requested a supplemental report from Dr. Schneider addressing that of Dr. Fisher. It combined appellant's files on September 25, 2006. On October 20, 2006 the Office determined that there was a conflict between Drs. Schneider and Fisher on the extent of appellant's continuing disability and residuals due to the December 12, 2005 employment injury. It referred appellant, a statement of accepted facts and a list of specific questions, to Dr. Steven Goldfarb, a Board-certified, for an impartial medical examination.

In a report dated November 14, 2006, Dr. Goldfarb discussed appellant's December 12, 2005 employment injury and medical treatment. He examined appellant and diagnosed myofascial pain syndrome and chronic lumbar spondylosis with degenerative disc disease of the lumbar spine. Dr. Goldfarb stated that appellant's left shoulder contusion and lumbar strain had resolved and she had no evidence of a cervical strain or contusion to her back. He opined that her continued lumbar spine pain was likely due to chronic lumbar spondylosis. Dr. Goldfarb found that appellant's continued symptoms and work limitations were not related to the December 12, 2005 employment injury. The Office requested a supplemental report from Dr. Goldfarb on December 18, 2006 addressing whether appellant sustained an aggravation of her degenerative disc disease due to the December 2005 injury and whether her current diagnosis of myofascial pain syndrome was due to her March 6, 2002 employment injury. On January 9, 2007 Dr. Goldfarb opined that appellant's low back pain was due to degenerative changes in her lumbar spine. He opined that appellant's December 2005 employment injury did not result in any aggravation of her preexisting degenerative condition. Dr. Goldfarb also opined that appellant's myofascial pain syndrome was unrelated to her December 12, 2005 employment injury.

The Office proposed to terminate appellant's medical and compensation benefits due to the December 12, 2005 employment injury on March 30, 2007. It allowed appellant 30 days to respond. On May 2, 2007 she contended that she experienced ongoing neck and left extremity symptoms.

Dr. Goldfarb reviewed additional medical records on May 18, 2007. He stated that his opinion had not changed.

By decision dated July 19, 2007, the Office terminated appellant's medical and compensation benefits due to her December 2005 employment injury based on the reports of Dr. Goldfarb.

Appellant, through her attorney, requested an oral hearing which was held on November 14, 2007. By decision dated January 29, 2008, the hearing representative affirmed the July 19, 2007 decision finding that the weight of the medical evidence rested with the opinion of Dr. Goldfarb.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.² The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement of disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which require further medical treatment.⁴

The Federal Employees' Compensation Act provides that 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.⁵ The implementing regulation states that if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician of an Office medical adviser or consultant, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case.⁶ It is well established that when 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 proper factual and medical background, must be given special weight.⁷

ANALYSIS

Appellant sustained an employment injury on December 12, 2005, which the Office accepted for a left shoulder contusion, lumbar sprain/strain, cervical strain and back contusion. Her attending physician, Dr. Schneider, a Board-certified orthopedic surgeon, supported her claim for ongoing residuals and disability due to this injury. The Office referred appellant to Dr. Fisher, a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. Fisher found that appellant's continuing medical conditions and disability were related to the March 6, 2002 employment injury rather than the December 12, 2005 employment injury. He found that residuals and disability due to appellant's December 12, 2005 injuries had ceased. Due to the disagreement between the Office referral physician and appellant's physician regarding her continuing medical condition and disability due to the December 12, 2005 employment injury,

¹ *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

² *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

³ *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001).

⁴ *Mary A. Lowe*, *supra* note 2.

⁵ 5 U.S.C. §§ 8101-8193, § 8123.

⁶ 20 C.F.R. § 10.321.

⁷ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

the Office properly referred appellant to Dr. Goldfarb, a Board-certified orthopedic surgeon, to resolve the conflict of medical opinion. The Board notes that there was a conflict of medical opinion evidence and that the Office properly determined that an impartial medical examiner was necessary to resolve the issues of this case.

Dr. Goldfarb provided three reports detailing appellant's history of injury, her medical treatment and her current physical conditions. He found that she sustained soft tissue injuries as a result of the December 12, 2005 employment injury which had resolved without residuals. Dr. Goldfarb noted that appellant had a preexisting degenerative spine condition which caused ongoing disability for work due to her medical residuals. He opined that appellant's December 12, 2005 employment injuries did not result in any aggravation of her underlying condition.

As required by the Board, Dr. Goldfarb's reports were based on a proper history of injury and included physical findings in support of his conclusions. He noted that appellant had sustained soft tissue injuries to her neck, shoulder and back and that these injuries had resolved. Dr. Goldfarb further noted that appellant's underlying degenerative condition was not further aggravated by these injuries and that her current symptoms and disability were due to her preexisting condition rather than the December 12, 2005 employment injury. He provided sufficient findings and medical reasoning to explain why appellant had no residuals or disability due to the December 12, 2005 employment injury. As Dr. Goldfarb's reports were detailed and well rationalized and based on a proper history of injury, these reports are entitled to special weight. The Office met its burden of proof to terminate appellant's compensation and medical benefits due to her December 12, 2005 employment injury.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation and medical benefits due to her December 12, 2005 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 28, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 24, 2008
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