

accident. The Office accepted the claim for multiple contusions, lower limb and aggravation of displaced cervical intervertebral disc. On April 3, 2001 appellant underwent an authorized C6 corpectomy with C5 to C7 anterior fusion. By letter dated September 26, 2002, the Office placed her on the periodic rolls for temporary total disability effective February 8, 2002.

On December 17, 2003 appellant was involved in a nonwork-related motor vehicle accident.

In a November 18, 2004 report, Dr. Richard T. Sheridan, an Office referral physician and Board-certified orthopedic surgeon, opined that appellant was capable of performing her date-of-injury position and no longer had residuals due to her accepted employment injuries.

On January 6, 2005 the Office proposed to terminate appellant's compensation benefits based on Dr. Sheridan's report.

In a January 13, 2005 report, Dr. Samuel King, a general practitioner and appellant's attending physician, provided findings and diagnoses related to appellant's nonemployment-related motor vehicle accident of December 17, 2003. He also indicated that appellant was "already permanently disabled prior to this accident."

By decision dated February 18, 2005, the Office terminated appellant's compensation benefits effective February 19, 2005 on the grounds that her injury-related disability had ceased.

On March 16, 2005 appellant requested an oral hearing. By decision dated November 1, 2005, an Office hearing representative found there was a conflict of medical opinion between Dr. Sheridan and Dr. King as to whether appellant had any residuals from the May 16, 2000 work injury. The hearing representative further found additional factual and medical information was needed in regards to the nonemployment-related motor vehicle accident of December 17, 2003 and the statement of accepted facts needed to be amended to include such information. Following such information, the Office was directed to refer appellant to an impartial medical examiner to resolve the conflict in medical evidence between Dr. Sheridan and Dr. King. Appellant's benefits were retroactively reinstated.

In a letter dated February 21, 2006, the Office requested appellant's attorney to provide the details of the December 17, 2003 motor vehicle accident and submit all relevant medical reports.

In letters of March 8 and April 18, 2006, appellant described the December 17, 2003 nonemployment-related motor vehicle accident and advised that the only injuries sustained were related to her knees. Physical therapy notes were received by the Office indicating that she received treatment from March 17 through 31, 2004 related to bilateral knee complaints.

In an April 4, 2006 report, Dr. King advised that appellant was seen for a follow up on the injuries she received in a motor vehicle accident of May 16, 2000. He noted complaints of right neck pain and occasional spasms as well as pain radiating into the glenohumeral joint of the right shoulder. Dr. King noted that there were no significant radicular changes and stated that this was her baseline. He indicated that appellant has had no new precipitating events and was doing her activities of daily living without significant difficulty. Dr. King provided his

examination findings and diagnosed a cervical strain, chronic and minimal; intermittent muscle spasms; right upper extremity paresthesias; right glenohumeral joint capsulitis and tendinitis; and history of old cervical disc herniation with discectomy and fusion at C5-6 with arousal of degenerative disc disease and osteoarthritis. He opined that appellant could “continue with her normal activities of daily living. Again, I have placed no permanent restrictions upon her.”

On August 22, 2006 the Office referred appellant along with an amended statement of accepted facts, a list of questions and the medical record to Dr. Thomas F. Scott, a Board-certified orthopedic surgeon, to resolve the conflict in medical opinion as to whether appellant had any residuals of her employment-related injury.

In a September 22, 2006 report, Dr. Scott noted appellant’s history of injury and treatment, including the nonemployment-related motor vehicle accident of December 17, 2003, and set forth his examination findings. He noted that appellant complained of pain in her head and neck with difficulty in her right arm and discomfort in the area of her chest. Dr. Scott stated that there was considerable disparity in the history obtained from appellant as from that gleaned from review of the records as well as physical findings on observation and during the course of the formal physical examination. He stated that “the examiner cannot help but conclude that this claimant may lack veracity or ability to cooperate during the course of the examination.” Dr. Scott opined that appellant’s accepted employment injuries had resolved. He did not detect any residuals of lower limb contusions. Dr. Scott stated that appellant may have some aggravation of preexisting cervical disc difficulty which was permanent, but there was no material change which altered the course of the underlying preexisting degenerative cervical disc disease. He further opined that appellant was capable of performing the duties of a census enumerator and that any present physical limitations were unrelated to the accepted employment injury. Dr. Scott opined that, in spite of appellant’s lack of mobility during the course of the physical examination, she did not sustain any permanent injuries as a result of the employment-related motor vehicle accident of 2000.

On November 2, 2006 the Office proposed to terminate appellant’s compensation benefits. It determined that, based on Dr. Scott’s report, appellant’s injury-related disability had ceased and she was capable of resuming her regular duties as a census enumerator. Appellant was afforded 30 days within which to submit any additional evidence.

In a letter dated November 22, 2006, appellant’s attorney indicated that appellant had an appointment scheduled for December 4, 2006 with Dr. Joseph Rapier, Jr., a Board-certified orthopedic surgeon.

By decision dated December 7, 2006, the Office finalized the termination of appellant’s compensation benefits effective that date. It found that the weight of the evidence rested with the opinion of Dr. Scott, the impartial medical examiner.

Appellant’s counsel requested an oral hearing which the Office scheduled for April 17, 2007. On April 16, 2007 counsel withdrew his request for an oral hearing and requested a review of the written record instead. In a May 15, 2007 letter, counsel indicated that the Office’s decision of December 7, 2006 was in error as it failed to consider the opinion of Dr. Rapier, which indicated a continuing disability.

In a December 4, 2006 report, Dr. Rapier noted the history of injury, appellant's subsequent treatment, his partial review of the medical records and presented his findings on physical examination. He stated:

“As far as the orthopedic problem is concerned, I feel that [appellant] probably sustained a strain to the cervical spine at the time of the accident which aggravated preexisting dormant degenerative disc disease. This is based mainly on her history. Evidently, [appellant] subsequently came to a discectomy and fusion but she continued to have significant neck pain.”

Dr. Rapier opined that appellant's neck pain was most likely due to the degenerative changes in her cervical spine. He noted that he did not find any definitive evidence of radiculopathy. Dr. Rapier further opined that he did not see appellant returning to work.

By decision dated December 3, 2007, the Office hearing representative affirmed the December 7, 2006 decision terminating appellant's compensation. The hearing representative found the report of the impartial medical examiner, Dr. Scott, constituted the weight of the medical evidence in establishing that appellant's accepted conditions had resolved.

LEGAL PRECEDENT

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.³ 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.⁴

Section 8123(a) 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 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 a proper factual and medical background, must be given special weight.⁶

² *Bernadine P. Taylor*, 54 ECAB 342 (2003).

³ *Id.*

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁵ 5 U.S.C. § 8123(a); *F.R.*, 58 ECAB ____ (Docket No. 05-15, issued July 10, 2007); *Regina T. Pellicchia*, 53 ECAB 155 (2001).

⁶ *See Gloria J. Godfrey*, 52 ECAB 486 (2001).

ANALYSIS

The Office accepted appellant's claim for multiple contusions, lower limb and aggravation of displaced cervical intervertebral disc and placed her on the periodic rolls. It has the burden of justifying the termination of appellant's compensation for these medical conditions.

To resolve the conflict in medical evidence between appellant's treating physician, Dr. King, and Dr. Sheridan, the second opinion physician, the Office referred the case to an impartial medical specialist, Dr. Scott, who concluded, in his September 22, 2006 report, that appellant had no residuals from the accepted work-related conditions and she was capable of resuming her date-of-injury position of census enumerator. In support of this conclusion, Dr. Scott provided an accurate factual and medical history, findings on physical examination and an unequivocal rationalized medical opinion that appellant had no continuing disabling residuals of the accepted employment injury. He stated he did not detect any residuals of lower limb contusions. Dr. Scott further stated that, while appellant may have some permanent aggravation of preexisting cervical disc disease, there was no material change which altered the course of the underlying preexisting degenerative cervical disc disease. In support of his opinion, he also noted the disparity in physical findings on observation and during the formal examination. Dr. Scott indicated that there was no basis on which to attribute any continuing condition to the 2000 work injury. The Office relied on Dr. Scott's opinion in its December 7, 2006 decision which found that appellant had no residuals or continuing disability stemming from her May 16, 2000 employment injury and was therefore not entitled to compensation or medical benefits.

The Board finds that Dr. Scott's impartial medical opinion establishes that appellant's accepted conditions resolved without continuing disability or residuals from her accepted May 16, 2000 employment injury. Dr. Scott's opinion is sufficiently probative, rationalized and based upon a proper factual background. Therefore, the Office properly accorded Dr. Scott's opinion as the special weight of an impartial medical examiner.⁷

Appellant subsequently submitted a December 4, 2006 report by Dr. Rapier. Based mainly on appellant's history, Dr. Rapier opined that appellant sustained a strain to the cervical spine at the time of the accident which aggravated preexisting dormant degenerative disc disease. He further opined that appellant's neck pain was most likely due to the degenerative changes in her cervical spine. Dr. Rapier's report, however, does not clearly support that appellant had continuing disability or residuals due to her accepted work injuries. As noted, his opinion is based mainly on appellant's history. Dr. Rapier did not have a complete medical history nor did he provide any rationale explaining how appellant's employment injury resulted in a continuing aggravation of her preexisting degenerative disc disease in her cervical spine. Furthermore, while he opined that appellant was totally disabled, he did not specifically relate such disability to the accepted employment injury or explain why appellant's residuals of the accepted conditions precluded her from performing the duties of her date-of-injury position. Thus,

⁷ *Darlene R. Kennedy*, 57 ECAB 414 (2006).

Dr. Rapier's report is insufficient to give rise to a new conflict or otherwise show that the termination was improper.⁸

Accordingly, the Board finds that Dr. Scott's opinion constituted the weight of medical opinion and supports the Office's December 7, 2006 decision to terminate appellant's compensation.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective December 7, 2006.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated December 3, 2007 is affirmed.

Issued: December 3, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁸ See *M.S.*, 58 ECAB ___ (Docket No. 06-797, issued January 31, 2007).