

Dr. Turturro diagnosed cervical strain, left knee and left hand contusions. An x-ray of the left knee revealed no fracture but mild arthritic changes. An x-ray of the cervical spine revealed no fracture, no subluxation and no soft tissue swelling. Appellant came under the treatment of Dr. Ellen M. Dillinger, a Board-certified internist. In reports dated September 11 and 28, 2006, Dr. Dillinger treated her for neck, knee and hand injuries sustained in a slip and fall on August 21, 2006 and recommended she stay off work. Appellant was referred to Dr. Howard J. Senter, a Board-certified neurosurgeon. In reports dated September 13 to October 19, 2006, Dr. Senter noted a history of injury and diagnosed cervical spondylosis and recommended a cervical discectomy. On September 6, 2006 he performed a microscopic anterior cervical discectomy, bone bank interbody fusion and anterior cervical plate fixation at C5-6 and C6-7 and diagnosed cervical spondylosis at C5-6 and C6-7.¹

In a report dated October 16, 2006, Dr. Senter noted that appellant was five weeks postcervical discectomy and experienced neck, shoulder and arm pain. He took her off work on October 11, 2006. On October 19, 2006 appellant returned to a limited-duty position, three days per week. On December 23, 2006 Dr. Senter increased appellant's work schedule to four days per week with a lifting restriction. On February 6, 2007 appellant presented with right buttock and right leg pain. A magnetic resonance imaging (MRI) scan of the lumbar spine revealed a bulging disc at L5-S1. Dr. Senter advised that appellant was fully recovered from her cervical spine surgery. In reports dated January 4 to March 23, 2007, Dr. Dillinger concurred with Dr. Senter's recommendation that appellant return to work four days per week with no lifting greater than 15 pounds intermittently.

On April 3, 2007 the Office referred appellant to Dr. Jorge L. Acevedo, a Board-certified orthopedic surgeon, for a second opinion. In a May 16, 2007 report, Dr. Acevedo, reviewed appellant's history of injury. A physical examination revealed reduced flexion and extension of the neck and motor examination revealed reduced hand grip strength bilaterally and sensory deficit in the upper extremities. Dr. Acevedo diagnosed preexisting degenerative disc disease at C5-6 and C6-7. He opined that appellant had a preexisting condition which was aggravated by her fall at work, which accelerated the need for surgery. In a work capacity evaluation, Dr. Acevedo noted that appellant could return to work eight hours per day with restrictions on reaching above the shoulder, pushing, pulling and lifting limited to five pounds with breaks. He noted that the restrictions would apply for a three to six-month period.

On June 23, 2007 Dr. Dillinger returned appellant to work full time as of July 1, 2007 with a 15-pound restriction. She advised that the work restrictions would continue indefinitely, possibly permanently.

On July 18, 2007 appellant accepted a job offer as a full time, modified-duty mail handler and returned to work.

¹ The record also contains earlier reports from Dr. Dillinger and Dr. Maryanne J. Henderson, an osteopath, who treated appellant for multiple injuries, including back injuries, chronic pain syndrome and myelopathy, sustained in a motor vehicle accident on April 1, 2001.

The Office found a conflict in medical opinion between Dr. Dillinger, for appellant, and Dr. Acevedo, for the Office, regarding her work restrictions. To resolve the conflict, the Office referred appellant to Dr. Frank J. Vertosick, a Board-certified orthopedic surgeon.

In reports dated August 20 to October 29, 2007, Dr. Dillinger noted that appellant returned to work full-time limited duty on July 1, 2007 but had multiple partial absences. She modified appellant's schedule noting that she could work four days per week at limited duty. A September 24, 2007 electromyogram was essentially normal. In a November 8, 2007 report, Dr. Lloyd G. Lamperski, Board-certified in pain management, diagnosed lumbar spine pain secondary to discogenic syndrome, right lower extremity radicular symptoms, cervical spinal pain and left upper extremity pain. He recommended interlaminar lumbar epidural steroid injections.

In a November 16, 2007 report, Dr. Vertosick reviewed the history of injury and medical treatment. He noted findings of a well-healed incision on the neck, normal lordosis, no spasm, minimal tenderness and normal rotation. Strength and sensation were grossly normal and reflexes were normal. Dr. Vertosick diagnosed a neck sprain and contusion of the left knee and left hand by history. On review of an April 24, 2006 MRI scan, he noted chronic spondylitic disease at C5-6 and C6-7. Dr. Vertosick noted that appellant had long-standing degenerative problems with her neck and left arm predating the work injury, which included injuries sustained in a motor vehicle accident in 2001. He opined that appellant had sustained a cervical strain at work from which she had recovered and that she could return to work at full duty without restriction based on her August 21, 2006 injury. Dr. Vertosick noted that appellant had long-standing problems with her neck and left arm and that surgery had been proposed prior to the work injury. He advised that any work-related aggravation did not require surgical intervention. Dr. Vertosick further opined that appellant reached maximum medical improvement and recovered from the accepted cervical strain. He found that appellant could return to work full duty without restrictions.

Appellant submitted a December 6, 2007 report from Dr. Dillinger, who diagnosed status postcervical discectomy and fusion, chronic pain and fibromyalgia. She noted that appellant's residuals had not resolved and that a full recovery was not expected. Dr. Dillinger noted that appellant could resume work full time for a trial period of 40 hours per week commencing December 17, 2007. In a December 12, 2007 letter of medical necessity, Dr. Mark Lo Dico, Board-certified in pain management, recommended a cervical stimulator and full back conductive garment for treatment of cervicalgia.

On January 9, 2008 the Office proposed to terminate compensation benefits for appellant's accepted neck sprain and contusions of the left knee and hand. It found that Dr. Vertosick's November 16, 2007 report established no residuals of the work-related employment injury.

Appellant submitted reports from Dr. Lo Dico dated August 15 to December 12, 2007, who treated her for lumbar pain and right hip pain and recommended an MRI scan of the lumbar spine.

By decision dated February 13, 2008, the Office terminated appellant's compensation benefits effective that day. The weight of the medical evidence, as represented by Dr. Vertosick, established that she had no continuing disability or residuals resulting from her accepted employment injury.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.⁴

ANALYSIS

The Office accepted appellant's claim for a neck sprain and contusions of the left knee and hand. It subsequently developed the medical evidence and determined that a conflict in medical opinion arose between appellant's attending physician, Dr. Dillinger, who disagreed with Dr. Acevedo, an Office referral physician, regarding appellant's work restrictions.⁵

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁶

In a November 16, 2007 report, Dr. Vertosick reviewed appellant's history, reported findings on examination and noted that the objective medical evidence established that her injuries of August 21, 2006 had resolved. He noted normal findings upon physical examination. The impairment specialist advised that appellant's accepted conditions resolved and that she could resume full duty. Dr. Vertosick noted that appellant had long-standing degenerative problems with her neck and left arm predating the work injury, including those sustained in a motor vehicle accident in 2001. He opined that appellant sustained a neck strain or at most a temporary aggravation of her degenerative disease in the August 21, 2006 work injury which had resolved. He advised that appellant did not require surgery due to injury. Dr. Vertosick further opined that appellant reached maximum medical improvement and her accepted injuries had resolved without residuals and that she could return to work full time without restrictions.

² *Gewin C. Hawkins*, 52 ECAB 242 (2001).

³ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁴ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

⁵ *See* 5 U.S.C. § 8123(a).

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

The Board finds that the opinion of Dr. Vertosick is sufficiently well rationalized and based upon a proper factual background. It is entitled to special weight and establishes that appellant's work-related conditions have ceased and that she can return to work full time without restrictions.

Appellant submitted a report from Dr. Dillinger who diagnosed status postcervical discectomy and fusion, chronic pain and fibromyalgia. Dr. Dillinger advised that appellant's residuals had not resolved and recovery was not expected. In a duty status form, she noted that appellant could resume work full time for a trial period of 40 hours per week commencing December 17, 2007. However, Dr. Dillinger failed to address how appellant's accepted conditions caused disability or the need for physical restrictions causally related to the August 21, 2006 employment injury.⁷ She was on one side of a conflict that was resolved by Dr. Vertosick and her report does not otherwise provide new findings or medical rationale sufficient to establish that any continuing condition or disability causally related to the August 21, 2006 work injury.⁸

The letter of medical necessity from Dr. Lo Dico recommended a cervical stimulator and full back conductive garment for treatment of cervicgia. However, he failed to provide any history of injury or explain how appellant's orthopedic condition and the recommended appliances were causally related to the accepted August 21, 2006 employment injury.⁹

Appellant submitted reports from Dr. Lo Dico dated August 15 to December 12, 2007. Dr. Lo Dico treated her for lumbar pain and right hip pain and recommended an MRI scan of the lumbar spine. However, these reports are not relevant to the accepted conditions in this case. Dr. Lo Dico did not provide a history of injury or a rationalized opinion addressing how any continuing condition was causally related to the August 21, 2006 injury.

The Board finds that Dr. Vertosick had full knowledge of the relevant facts and medical history. At the time benefits were terminated, he clearly opined that appellant had no residuals or disability attributable to her accepted orthopedic conditions. Dr. Vertosick's opinion is found to be probative and reliable and represents the special weight of the medical evidence. The Office properly terminated appellant's benefits for the accepted conditions of neck sprain and contusions of the left knee and hand effective February 13, 2008.¹⁰

⁷ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁸ See *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

⁹ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

¹⁰ The Board notes that appellant did not appeal the December 11, 2007 Office decision, denying her claim for 12.06 hours of compensation for July 24 and September 19, 2007 and therefore this decision is not before the Board at this time.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate benefits effective February 13, 2008.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 13, 2008 is affirmed.

Issued: December 10, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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