



employment on September 26, 2003. Appellant stopped work on October 15, 2003. Her treating physician, Dr. David L. Phillips, Board-certified in occupational medicine diagnosed overuse syndrome, myofascial pain syndrome, chronic cervical strain, chronic thoracic strain, bilateral forearm tendinitis and bilateral shoulder pain, who recommended that appellant stay off work for complete rest. On November 12, 2003 appellant returned to work for four hours per day with restrictions comprised of limited use of the hands and arms and lifting restrictions up to 25 pounds. She continued to work for four hours per day with various changes in her restrictions.

On January 13, 2004 the Office accepted appellant's claim for myofascial pain syndrome, cervical strain, thoracic strain, bilateral forearm tendinitis and bilateral rotator cuff syndrome. Appellant received appropriate compensation benefits.

Appellant stopped work on July 30, 2005. In an August 18, 2005 report, Dr. Phillips advised that appellant's pain had lessened "since being off work." He continued to treat appellant and recommend that she not work.

On August 29, 2005 appellant was examined by Dr. Susan Upham, Board-certified in occupational medicine and a fitness-for-duty physician, who noted appellant's history of injury and treatment and conducted a physical examination. Dr. Upham determined that appellant had untreated hypothyroidism, depression and anxiety disorder and chronic pain syndrome of the arms, neck and upper back since the 1980's. She also noted that further diagnostic testing was needed to rule out underlying bone abnormalities such as degenerative arthritis and cervical disc disease. Dr. Upham recommended additional treatment and opined that appellant could return to part-time work for four hours per day, gradually increasing by one hour per day each week or every other week over a period of one to two months. She provided restrictions which included no overhead or over the shoulder work, occasional self-paced reaching with the shoulders, avoiding forceful grip/grasp/push/pull with arms and hands and self-pacing with the use of the arms. Dr. Upham restricted lifting to no more than 10 pounds.

In an October 5, 2005 report, Dr. Phillips indicated that appellant should remain off work indefinitely. He indicated that appellant had tried to return to work but failed.

The Office referred appellant to Dr. Lawrence Leonard, a Board-certified orthopedic surgeon, for a second opinion. In a report dated December 2, 2005, Dr. Leonard described appellant's history of injury and treatment, which included chronic neck problems prior to 1997. He conducted an examination and noted that there was no objective evidence of any significant musculoskeletal disease and no problem with the cervical spine, shoulder and/or evidence of extensor tendinitis. Dr. Leonard opined that appellant did not "suffer objectively verifiable residuals from this work-related injury." He noted that appellant's present symptoms were similar to her preexisting condition. Dr. Leonard advised that there were no objective findings and that appellant's condition had resolved. He opined that appellant could return to work in a position that did not require repetitive work.

On December 14, 2005 the Office issued a notice of proposed termination of compensation, based on of Dr. Leonard's medical opinion. It advised appellant that she had 30 days to submit additional evidence or argument.

On January 3, 2006 Dr. Phillips indicated that the employing establishment did not have any light-duty work which would allow minimal use of the hands, no more than 10 minutes per hour. He noted that appellant's position required repetitive sorting of letters. Dr. Phillips disagreed with Dr. Leonard that appellant could return to work and opined that she needed to remain off work "indefinitely." Dr. Leonard added that appellant was permanently and totally disabled as a result of her duties with the employing establishment.

On January 12, 2006 appellant's representative contended that Dr. Leonard's report was insufficient to carry the weight of the evidence. She also argued that there was an unresolved conflict, which necessitated referral to an impartial medical examiner. On January 17, 2006 the Office received a statement from appellant regarding her clerical duties.

On February 3, 2006 the Office referred appellant along with a statement of accepted facts and the medical record, to Dr. John Padavano, a Board-certified orthopedic surgeon and osteopath for an impartial medical evaluation. It noted the conflict in opinion between the treating physician, Dr. Phillips, who opined that appellant was permanently and totally disabled and the second opinion physician, Dr. Leonard, who opined that she was capable of working full time.

In a February 27, 2006 report, Dr. Padavano noted appellant's history of injury and treatment and conducted a physical examination. He found a full cervical range of motion, negative foraminal compression testing and normal sensation in the arms. Dr. Padavano noted that appellant's biceps, triceps and brachial radial reflexes were "2+/4+," that she had no weakness with shoulder shrug and resisted abduction or elbow and wrist flexion and extension. Appellant had mild discomfort with palpation over the right lateral epicondyle and over the right and left medial epicondyles. Dr. Padavano indicated that appellant had no peripheral edema to the dorsal or volar forearms and had subluxation of both ulnar nerves with elbow flexion. He advised that this was not associated with ulnar nerve paresthesia. Dr. Padavano stated that appellant's Phalen's maneuver, Tinel's at the wrist and cubital tunnel testing were negative. He determined that appellant had a history of repetitive stress injuries to the arms and that her current diagnosis included resolving repetitive stress injury to the arms and myofascial pain. Dr. Padavano could not explain why appellant was not substantially better "given the fact that she has been out of work since July 2005. Certainly, the majority of repetitive type injuries do indeed improve with physical therapy, job place modification and time." He noted that appellant "admits to being substantially improved, however she is concerned if she return to work at the [employing establishment] her injury will reoccur." Dr. Padavano advised that appellant had preexisting low back and cervical discomforts that were not work related. He noted that appellant had received chiropractic treatment since 1991 but did not believe that continued chiropractic treatment was warranted. Dr. Padavano also noted that appellant had a history of upper extremity and low back discomfort, which was contrary to Dr. Phillips' reports, which indicated that she did not have a preexisting condition. He concluded that appellant had the ability to return to work at the employing establishment as there were no objective findings to preclude her return to work. He opined that appellant had reached maximum medical improvement. Dr. Phillips completed a work capacity evaluation advising that appellant could work eight hours per day and that she had no limitations.

By decision dated March 30, 2006, the Office terminated appellant's compensation benefits effective April 15, 2006.

The Office subsequently received additional evidence, which included copies of previously received reports. In an April 5, 2006 report, Dr. Phillips noted that appellant was stressed over receiving the Office's termination decision. He indicated that appellant was bothered by lifting, reaching, pushing, pulling and repetitive hand use. Dr. Phillips noted that appellant would like to return to work for four hours a day, 20 hours a week, beginning on April 15, 2006. He also indicated that he did not agree with Dr. Padavano with regard to his belief that appellant could return to full-duty without time restrictions and opined that he believed that "he is setting her up for further injury."

On April 11 and November 9, 2006 appellant's representative requested a hearing, which was held on May 1, 2007. She submitted a summary of her work activities from April 15 to May 6, 2006. Appellant also submitted a statement regarding her clerical duties.

On April 15, 2006 appellant returned to full duty.

Dr. Phillips continued to treat appellant and submit reports. In an April 26, 2006 report, he noted that appellant was working full duty without restrictions but continued to have chief complaints of bilateral shoulder pain, bilateral forearm discomfort, as well as upper back and neck pain and difficulty lifting, reaching pushing and pulling. In a November 22, 2006 report, Dr. Phillips noted that appellant wanted to work within her capacity; however, she was out of work as there was "no work within her work capacity." He noted that appellant's return to work on April 15, 2006 had caused a "significant reaggravation of her neck, upper back and bilateral upper extremity medical conditions...." Dr. Phillips also indicated that he disagreed with the findings of Dr. Padavano regarding whether appellant had any objective findings and explained that she had "objective clinical findings consistent with the medical conditions then and she continues to have those findings today." He continued to treat appellant and submit reports. The Office also received physical therapy reports.

By letter dated May 22, 2007, appellant's representative alleged that the report of the impartial medical examiner did not resolve the medical conflict. He enclosed the May 7, 2007 report of Dr. Phillips, who repeated his previous diagnoses and alleged that appellant continued to suffer from these conditions. He explained that appellant had not completely recovered from her occupational injuries "due to the extent and severity of the injuries...." Dr. Phillips noted that greater than "20 percent of patients go on to develop chronic pain." He advised that appellant also developed anxiety and depression as a result of her occupational injuries which required ongoing medication and treatment. Furthermore, Dr. Phillips repeated his previous disagreement with Dr. Padavano and noted that appellant continued to suffer residuals from her accepted condition. He also opined that if appellant returned to work in a repetitive type job, she would suffer further damage. Appellant also provided a statement related to Dr. Upham's August 29, 2005 report and alleged that Dr. Upham improperly sought to link her current condition on her hypothyroidism. She also denied that she had long-term and regular chiropractic treatment, but rather alleged that it was sporadic. Appellant also advised that Dr. Upham misrepresented her use of Lexapro and denied any previous history of depression or anxiety before 2005 and that she was "fine ever since." In a letter dated May 31, 2007, Nancy Emerson, an employing

establishment injury compensation specialist, refuted appellant's allegations. On June 12, 2007 appellant responded to the employing establishment.

By decision dated July 16, 2007, the Office hearing representative affirmed the Office's March 30, 2006 decision.

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

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>2</sup> 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.<sup>3</sup>

Furthermore, the Federal Employees' Compensation Act<sup>4</sup> provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.<sup>5</sup> In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>6</sup>

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

The Office determined that a conflict of medical opinion existed regarding the nature and extent of any ongoing residuals from the accepted work injuries of myofascial pain syndrome, cervical strain, thoracic strain, bilateral forearm tendinitis and bilateral rotator cuff syndrome based on the opinions of Dr. Phillips, appellant's physician, who supported ongoing employment-related conditions and disability and Dr. Leonard, a second opinion physician, who opined that the employment-related conditions had resolved and that appellant could return to nonrepetitive work. Therefore, the Office properly referred appellant to Dr. Padavano, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict.

In his February 27, 2006 report, Dr. Padavano noted appellant's history of injury and treatment and conducted a physical examination and indicated that appellant had full cervical range of motion, negative foraminal compression testing, normal sensation in the upper extremities and no weakness with shoulder shrug, resisted abduction, elbow flexion and extension. He also determined that appellant had a history of repetitive stress injuries to the upper extremities and diagnosed repetitive stress injury and myofascial pain. While

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<sup>2</sup> *Curtis Hall*, 45 ECAB 316 (1994).

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

<sup>4</sup> 5 U.S.C. §§ 8101-8193, 8123(a).

<sup>5</sup> 5 U.S.C. § 8123(a); *Shirley. Steib*, 46 ECAB 309, 317 (1994).

<sup>6</sup> *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

Dr. Padavano provided an opinion that appellant had the ability to return to work at the employing establishment as he could find no objective findings, he also opined that he could not explain why appellant was not substantially better with regard to her accepted conditions “given the fact that she has been out of work since July 2005.” He did not provide a fully rationalized opinion specifically addressing whether appellant’s accepted conditions had resolved. Rather, Dr. Padavano characterized her myofascial pain condition as resolving, indicating that it limited her capacity for none. The Board has held that medical opinion that is not fortified by rationale is of diminished probative value.<sup>7</sup> Dr. Padavano stated that appellant’s accepted condition of myofascial pain. Consequently, his report does not support that all residuals of appellant’s accepted conditions have resolved.

The Board finds that Dr. Padavano’s opinion is not entitled to special weight as his opinion was insufficiently rationalized to resolve the conflict of medical opinion. Thus, the Office improperly relied upon his reports in finding that appellant’s employment-related conditions had resolved. Accordingly, it did not meet its burden of proof to justify termination of all benefits.

### **CONCLUSION**

The Board finds that the Office did not properly terminate appellant’s benefits effective April 15, 2006.

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<sup>7</sup> *Cecilia M. Corley*, 56 ECAB 662 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 16, 2007 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 4, 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