

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

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| <b>S.S., Appellant</b>        | ) |                               |
|                               | ) |                               |
| <b>and</b>                    | ) | <b>Docket No. 08-1446</b>     |
|                               | ) | <b>Issued: March 18, 2009</b> |
| <b>DEPARTMENT OF DEFENSE,</b> | ) |                               |
| <b>DECA-SOUTHWEST REGION,</b> | ) |                               |
| <b>Fort Lee, VA, Employer</b> | ) |                               |
|                               | ) |                               |

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 18, 2008 appellant timely appealed an October 17, 2007 merit decision of the Office of Workers' Compensation Programs concerning the termination of her compensation and a March 20, 2008 decision that found that she abandoned her hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

**ISSUES**

The issues are: (1) whether the Office properly terminated appellant's compensation benefits effective October 17, 2007; and (2) whether appellant abandoned a telephonic hearing scheduled for March 6, 2008.

**FACTUAL HISTORY**

On December 3, 1980 appellant, then a 35-year-old store worker, injured her right arm while pushing down on a scrapper to remove wax from a floor. Under file number xxxxxx495, her claim was accepted for right arm strain. Appellant was disabled from work for the period

December 5, 1980 to January 5, 1981.<sup>1</sup> She filed a claim on April 23, 1982 when her lower back “popped” after lifting a case while stocking. Under file number xxxxxx113, the Office accepted a low back strain and sciatica with right hip joint degeneration and total hip replacement on November 1, 2001. Appellant stopped work on July 14, 1982 and returned to full duties on August 3, 1982. On May 11, 1983 she injured her right shoulder while trying to catch a box of cheese from falling. Under file number xxxxxx774, appellant’s claim was accepted for strains of her right shoulder, right upper arm and neck. She stopped work on May 12, 1983 and was intermittently disabled through December 11, 1983. On March 18, 1984 appellant was reassigned to the position of travel clerk. On August 7, 1986 she tripped over an extension cord using her right upper extremity to break the fall. Under file number xxxxxx133, appellant’s claim was accepted for right wrist contusion and right shoulder strain. She stopped work on August 11, 1986 and resigned on February 20, 1987.

In an August 23, 2006 report, Dr. Usman Siddiqui, a neurologist, noted appellant’s history of neck and back pain, which she attributed to the fall at work in May 1983. He also noted that appellant had been unable to work since 1987 secondary to her symptoms. Dr. Siddiqui provided an impression of cervical pain with radiation to hands; lumbosacral pain with numbness in the legs; migrainous headache and dizziness; degenerative spine disease and arthritis; history of hypothyroidism and history of depression. He recommended further testing. In a November 12, 2006 report, Dr. Siddiqui advised that a September 12, 2006 electromyogram (EMG) suggested acute or chronic left L5-S1 lumbosacral radiculopathy and mild right carpal tunnel syndrome. He submitted additional progress reports on appellant’s conditions.

On March 23, 2007 appellant was referred to Dr. E. Gregory Fisher, a Board-certified orthopedic physician, for a second opinion. In an April 26, 2007 report, Dr. Fisher noted the history of injury, appellant’s medical treatment and diagnostic testing following her work injuries. He noted that the Office accepted a right shoulder strain, right upper extremity strain and strain of the back and neck area for her May 1983 injury and a low back strain and sciatica from the April 1982 injury. On reviewing the medical records, Dr. Fisher noted that appellant saw her physicians for chronic pain over the neck, shoulders and low back area on a regular basis. Appellant’s diagnoses were degenerative disc disease; arthritis of the cervical and lumbar region; and a known right rotator cuff tear. Dr. Fisher noted that Dr. Siddiqui was treating appellant for chronic lumbar and sacral pain with numbness and tingling over the arms and legs with the diagnosis of degenerative spine disease and arthritis. He noted that appellant underwent numerous diagnostic tests from 1983 through 2006. The beginning lumbar and shoulder x-rays were normal and, through the years, the x-rays and magnetic resonance imaging (MRI) scans revealed multilevel degenerative disc disease and degenerative arthritis involving the cervical and lumbar region. Examination revealed generalized pain, discomfort and tenderness over the cervical and lumbar area of the back with restriction of motion over each of these areas associated with pain. Neurological examination of the upper and lower extremities failed to show any radicular signs or symptoms. There was no objective evidence of neurological deficits to suggest sciatica. Dr. Fisher opined that appellant’s various strains of the right upper arm, lower back, right shoulder, neck, right wrist contusion and sciatica had resolved many years prior and were no longer present. He opined that appellant’s sciatica had healed and resolved by the

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<sup>1</sup> This claim is administratively closed.

time she returned to full duty on August 3, 1982. Since that time, there was no evidence of any residuals being present until the 2006 EMG, which showed chronic L5-S1 radiculopathy. However, Dr. Fisher stated that physical examination showed no radicular signs or symptoms in the lower extremities. Straight leg rising was negative, reflexes were equal, motor power was normal and sensation was intact indicating no positive neurological findings to account for the presence of sciatica. Dr. Fisher further opined that appellant's right hip joint degeneration was completely resolved as it was replaced by an artificial hip. He indicated that appellant had an excellent result from that procedure, which his examination confirmed. Dr. Fisher opined that appellant's current diagnosis was postoperative total hip replacement of the right side secondary to degenerative arthritis with an excellent result. Excluding appellant's age and nonwork-related diagnoses, Dr. Fisher opined that appellant could perform the full duties of a store worker and that of a travel clerk since all accepted conditions, including the strain of the right upper arm, low back area, right shoulder, neck and right wrist contusion and right hip joint degeneration, had healed and resolved.

The Office found a conflict in medical opinion between Dr. Siddiqui and Dr. Fisher as to whether appellant's accepted conditions had resolved. It referred her, together with a statement of accepted facts and the medical record, to Dr. Alan Kohlhass, a Board-certified orthopedic surgeon, in order to resolve the conflict.

In a July 2, 2007 report, Dr. Kohlhass reviewed the medical record, statement of accepted facts, appellant's employment injuries and her course of medical treatment. On examination, Dr. Kohlhass advised that appellant ambulated normally but complained of hip pain. Appellant also complained of pain with motion of her cervical-thoracic, shoulder and low back areas. Straight leg rising produced back pain at 80 degrees. Dr. Kohlhass opined that appellant had made a complete recovery from her accepted injuries and that she could perform the full duties of a store worker and that of a travel clerk. He indicated that appellant's continuing complaints were due to her age and other nonwork-related conditions. With regard to her sciatica condition, Dr. Kohlhass stated that there was no sign based on physical examination or diagnostic testing, to show that it still existed. He noted that the September 12, 2006 EMG performed by Dr. Siddiqui was only suggestive of an acute or chronic L5-S1 lumbar radiculopathy and not diagnostic of that condition. Dr. Kohlhass stated all signs of degenerative changes in the right hip were removed by the total hip replacement, for which appellant had a good result. He advised that, although appellant had some continued discomfort in her right hip, this was not related to any degenerative changes in the hip joint. Dr. Kohlhass indicated that the current diagnosis was post-total joint replacement of the right hip. He reiterated that appellant's accepted work injuries had resolved.

On August 28, 2007 the Office issued a notice of proposed termination of appellant's compensation and medical benefits, based on Dr. Kohlhass' July 2, 2007 report.<sup>2</sup> It found that the medical evidence established that appellant's accepted conditions had resolved and that she was able to perform her date-of-injury positions without restrictions. The Office provided 30 days for appellant to respond.

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<sup>2</sup> The Office excluded from the termination of medical benefits future treatment of the right hip as causally related to its replacement.

Appellant submitted copies of diagnostic testing and monthly progress reports from Dr. Siddiqui from late 2006 to August 28, 2007. A September 26, 2006 EMG and nerve conduction velocity (NCV) study, noted an impression of mild right carpal tunnel syndrome and chronic neuropathic changes, suggestive of mild acute and/or chronic L5-S1 lumbosacral radiculopathy. A September 22, 2006 MRI scan of the cervical area contained an impression of multilevel spondylotic changes and stenosis at C5-6 and C4-5, with narrowing of left neural foramen. A September 22, 2006 MRI scan of the lumbar area contained an impression of multiple disc bulges and multilevel spondylotic changes. On August 28, 2007 Dr. Siddiqui advised that appellant's symptoms started after a fall and injury at work and she had ongoing back pain, numbness in legs, headache and depression. In his progress reports, he diagnosed left L5-S1 radiculopathy; right carpal tunnel syndrome; numbness in the legs; headache; degenerative disease of the spine; and history of arthritis and depression.

By decision dated October 17, 2007, the Office finalized the termination of appellant's compensation and medical benefits effective that day.<sup>3</sup>

On November 5, 2007 appellant requested an oral hearing. In a letter dated January 31, 2008, the Office notified appellant that a telephonic hearing on her case would be held on March 6, 2008 at 9:30 a.m. eastern time. Appellant was directed to call a toll-free number a few minutes before 9:30 a.m. eastern time March 6, 2008 and enter the pass code provided.

By decision dated March 20, 2008, the Office found that appellant had abandoned her request for an oral hearing. It found that she did not notify the Office either before or after the hearing to explain her failure to telephone at the scheduled time for her hearing.

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

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>4</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>6</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>7</sup>

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<sup>3</sup> Following the issuance of the Office's October 17, 2007 decision, it received additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant may submit this evidence to the Office with a written request for reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

<sup>4</sup> See *Beverly Grimes*, 54 ECAB 543 (2003).

<sup>5</sup> *James M. Frasher*, 53 ECAB 794 (2002).

<sup>6</sup> See *Beverly Grimes*, *supra* note 4. See also *Franklin D. Haislah*, 52 ECAB 457 (2001).

<sup>7</sup> See *Beverly Grimes*, *supra* note 4.

Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part that, if there is 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.<sup>8</sup> When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.<sup>9</sup> 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.<sup>10</sup>

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

The Office accepted appellant's claims for right shoulder and right upper arm strain, neck strain, low back strain, sciatica, right hip joint degeneration with total hip replacement and right wrist contusion as a result of her work-related injuries in 1982, 1983 and 1986. It bears the burden of proof to terminate appellant's compensation and medical benefits for these medical conditions.<sup>11</sup>

The Office properly determined that a conflict arose in medical opinion as to whether appellant had any disability or residuals due to her accepted conditions. Appellant's treating physician, Dr. Siddiqui, opined that appellant's current conditions resulted from her work-related injuries. The Office's second opinion physician, Dr. Fisher, opined that the accepted conditions had resolved.

In order to resolve the conflict, the Office referred appellant to Dr. Kohlhass for an impartial medical examination and an opinion as to whether she had residuals from her accepted conditions and, if so, whether her systems were disabling. Dr. Kohlhass reviewed the record and statement of accepted facts and performed a thorough examination of appellant. In a July 2, 2007 report, he provided detailed findings of his examination and opined that appellant had completely recovered from the various strains of the right upper arm, lower back, right shoulder, neck and right wrist contusion. Dr. Kohlhass found that appellant's examination and diagnostic testing was devoid of any indication that sciatica still existed. He noted that the EMG done by Dr. Siddiqui on September 12, 2006 was only suggestive of an acute or chronic L5-S1 lumbar radiculopathy and not diagnostic of that condition. Dr. Kohlhass noted that all signs of degenerative changes in the right hip had been removed by the total hip replacement and that her continued discomfort in the right hip was not related to any degenerative changes past surgery. Dr. Kohlhass indicated that appellant's continuing symptoms were due to her age and nonwork-related condition, noting that, excluding appellant's age and nonwork-related diagnoses, she was capable of performing her date-of-injury positions as a store worker or travel clerk.

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<sup>8</sup> 5 U.S.C. § 8123(a).

<sup>9</sup> *William C. Bush*, 40 ECAB 1064, 1075 (1989).

<sup>10</sup> *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

<sup>11</sup> As previously noted, the Office did not terminate medical benefits for future treatment of the right hip as causally related to its replacement. *See supra* note 2.

Dr. Kohlhaas found no basis on which to attribute any continuing condition or symptoms to the accepted employment injuries.

The Board finds that the Office properly relied on Dr. Kohlhaas' July 2, 2007 report in determining that appellant was not disabled as a result of and had no residuals from, her accepted conditions. As noted above, Dr. Kohlhaas' opinion is sufficiently well rationalized and based upon a proper factual background. The Office properly accorded special weight to the impartial medical specialist's findings.<sup>12</sup>

Appellant did not submit sufficient medical evidence to overcome the weight of Dr. Kohlhaas's opinion or to create a new conflict. She submitted progress reports from Dr. Siddiqui, who was on one side of the conflict. Reports from a physician who was on one side of a medical conflict resolved by an impartial specialist, are generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict.<sup>13</sup> While Dr. Siddiqui reported that appellant had left L5-S1 radiculopathy, right carpal tunnel syndrome, numbness in the legs, headache, degenerative disease of the spine and history of arthritis and depression, none of his reports explain how her conditions were causally related to the accepted employment injuries. In an August 28, 2007 report, Dr. Siddiqui advised that appellant's symptoms began after her work-related injuries; however, he provided no medical explanation as to why that was the case or how such symptoms were causally related to the accepted employment injuries.<sup>14</sup> Therefore, Dr. Siddiqui's reports are of limited probative value.

Reports of diagnostic testing provided by appellant did not contain an opinion regarding the cause of the diagnosed conditions. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>15</sup>

As the weight of the medical evidence establishes that appellant was no longer disabled as a result of and had no residuals from, her accepted conditions, the Office properly terminated her compensation benefits.

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

The Office regulations address the requirements for obtaining a hearing and provide that a teleconference may be substituted for the oral hearing at the discretion of the hearing representative.<sup>16</sup> Scheduling is at the sole discretion of the hearing representative and is not reviewable.<sup>17</sup>

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<sup>12</sup> *Bryan O. Crane*, 56 ECAB 713 (2005).

<sup>13</sup> *See Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>14</sup> *See Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>15</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>16</sup> 20 C.F.R. §§ 10.615, 10.616.

<sup>17</sup> 20 C.F.R. § 10.622(b).

The legal authority governing abandonment of hearings rests with the procedure manual of the Office which provides that a hearing can be considered abandoned only under very limited circumstances.<sup>18</sup> The following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. Under these circumstances, the Office will issue a formal decision finding that the claimant has abandoned his or her request for a hearing.<sup>19</sup>

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

By decision dated August 28, 2007, the Office terminated appellant's compensation and medical benefits effective that day. Appellant timely requested an oral hearing. By letter dated January 31, 2008, the Office mailed appellant a notice that a telephone hearing was scheduled at 9:30 a.m. eastern time on March 6, 2008 and provided instructions for contacting the Office. The notice was mailed to her address of record.

The Board notes that the January 31, 2008 Office letter notified appellant that a telephone hearing had been scheduled. Appellant did not communicate with the Office either before or within 10 days after the scheduled hearing to request a postponement or explain why she did not telephone the Office for the scheduled hearing as instructed. The record supports that she did not request a postponement of the scheduled March 6, 2008 hearing, that she failed to appear by not participating in the scheduled teleconference and that she failed to provide any notification for such failure within 10 days of the scheduled date of the telephone hearing.

On appeal, appellant contends that she was told on the telephone that if a representative was not available in her area, she would be called. There is no evidence of any such conversation in the record. Furthermore, the record establishes that the Office mailed appropriate notice of the March 6, 2008 telephonic hearing. The Board finds that, as the conditions for abandonment as specified in the Office's procedure manual were met, the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.<sup>20</sup>

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<sup>18</sup> *Claudia J. Whitten*, 52 ECAB 483 (2001).

<sup>19</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999); *D.F.*, 58 ECAB \_\_\_\_ (Docket No. 06-1815, issued November 27, 2006).

<sup>20</sup> See *Claudia J. Whitten*, *supra* note 18.

**CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation and medical benefits effective October 17, 2007 and that she abandoned a telephonic hearing scheduled for March 6, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated March 20, 2008 and October 17, 2007 are affirmed.

Issued: March 18, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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