United States Department of Labor
Employees' Compensation Appeals Board

B.H., Appellant	)	
and	)	**Docket No. 09-825**
	)	**Issued: November 18, 2009**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Orlando, FL, Employer	)	

Appearances:
Capp P. Taylor, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 9, 2009 appellant, through her representative, filed a timely appeal from the November 3, 2008 merit decision an the Office of Workers' Compensation Programs' hearing representative who affirmed the termination of her compensation for cervical sprain. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUES

The issues are: (1) whether the Office has met its burden to terminate appellant's compensation for the accepted medical condition of cervical sprain; and (2) whether appellant has met her burden to establish that the work incident on June 17, 2005 caused another medical condition, such as a disc herniation at C3-4 with radiculopathy, a permanent aggravation of her degenerative disc disease or a spinal cord injury.

FACTUAL HISTORY

On June 20, 2005 appellant, then a 44-year-old transportation security screener, filed a claim alleging that she sustained a traumatic injury to her right arm, shoulder and neck on June 17, 2005 while loading luggage onto an x-ray machine. She described a pulling sensation in the right shoulder and neck to the fingertips.

On June 28, 2005 Dr. Devin K. Datta, a Board-certified orthopedic surgeon, reported that appellant was over one year status post C5-7 anterior cervical discectomy and fusion. He stated that she did very well from the operation with significant improvement of both neck and arm pain. Appellant recently had a work-related injury, following which she had significant neck, right-sided numbness, tingling and pain going into her right posterolateral shoulder and arm, somewhat similar to her previous symptoms. Dr. Datta diagnosed status post C5-7 anterior cervical discectomy and fusion, mild degenerative disc disease C3-5, and "new onset of neck and right arm pain." He recommended a magnetic resonance imaging (MRI) scan to rule out any new disc herniations, and in the meantime he took appellant off work.

On July 25, 2005 Dr. Datta reviewed appellant's MRI scan and noted an unusual abnormality on the posterior aspect of the spinal cord at approximately the C4-5 level. He stated that it represented either a focal collection of hemosiderin or capillary telangiectasia, unlikely spinal cord tumor or previous injury. Compared to appellant's April 2004 MRI scan, Dr. Datta saw a slight increase on the T2 images with some bright seen on that exact same spot, "which may indicate something preexisting." He diagnosed status post discectomy, mild degenerative disc disease, and now, spinal cord abnormality at the C4-5 level.

On August 22, 2005 Dr. Datta reported that all of appellant's symptoms worsened after June 17, 2005, "in which she sustained an injury at work." Prior to that appellant had cervical surgery from which she did extremely well. Dr. Datta's diagnoses included "[w]ork-related injury with increased neck and bilateral arm pain." He reported that appellant had a new injury at work that caused significant problems with her neck that he was working on the abnormality seen. Dr. Datta stated: "Clearly, [appellant] was doing fine up until the June 17, 2005, injury and had significant neck and arm symptoms that were new and different than anything she has experienced in the past." He recommended keeping appellant off work. On January 31, 2006 Dr. Datta addressed the issue of causal relationship:

> "I have read the statement dated January 9, 2006 prepared by [appellant] regarding the injury sustained on June 17, 2005. The statement explains the activity which [she] was performing at the time of injury which occurred on June 17, 2005. I have diagnosed [appellant] with a disc herniation at C3-4 with radiculopathy into both arms, and aggravated degenerative disc disease. I believe the diagnosis of herniated disc at C3-4 with radiculopathy is a new condition and that the degenerative disc disease is a permanent aggravation caused by the accident that occurred on June 17, 2005, while performing the duties discussed in the statement prepared by [her]. Although [appellant] has a preexisting condition in the cervical region, she was able to perform her duties with the [employing establishment]. Since the new injury her MRI [scan] films have changed and she is no longer capable of performing her duties. I arrived at my opinion by

reviewing the MRI [scan] films of July 7, 2005, September 7, 2005, and films taken prior to the above-referenced date of accident. I reviewed x-ray films and examined the patient. I believe that the diagnosed conditions are permanent and at this time the patient is unable to work."

The Office referred appellant, together with the case record, to Dr. Stephen R. Gott, a Board-certified orthopedic surgeon, for a second opinion on whether she sustained a cervical condition causally related to the June 17, 2005 work incident. On June 29, 2006 Dr. Gott reviewed appellant's history of injury, prior history of neck injury and current complaints. He also reviewed her medical records, including the MRI scans, Dr. Datta's reports and current x-rays. After describing his findings on physical examination, he diagnosed (1) cervical strain without additional neurocompressive injury secondary to work-related injury of June 17, 2005, and (2) status post prior anterior cervical fusion.

Dr. Gott reported that he did not identify any new neurocompressive pathology that might have resulted from the June 17, 2005 injury. He stated that the disc osteophyte complex seen at C6-7 in the MRI scans of July and September 2005 was a residual of her prior surgery. Dr. Gott noted that appellant related the chronic weakness in her right upper extremity to the weakness that occurred following her first disc injury in 2004. He found she was capable of light duty with restrictions of no lifting greater than 15 pounds "relative to her injury of June 17, 2005." Dr. Gott added that appellant was reaching a point of maximum medical improvement relative to her June 17, 2005 injury with a three percent permanent impairment related to that date of injury.

On August 22, 2006 the Office accepted appellant's claim for a cervical sprain. Appellant received compensation for temporary total disability on the periodic rolls.

On March 19, 2007 Dr. Sachin R. Shenoy, an attending Board-certified neurologist, reviewed her records. He noted that the 2004 MRI scan showed no evidence of a spinal cord injury or spinal cord compression, but the post-injury MRI scan in July 2005 suggested a signal abnormality at C4-5, which reflected focal hemosiderin deposits consistent with a spinal cord trauma. Appellant did not have symptoms after the initial surgery to explain this lesion. "Therefore, based on the MRI scans, I feel that it is most likely that [appellant] suffered a spinal cord injury at the second incident on June 17, 2005. All of her symptoms that she describes today are probably as a result of the spinal cord injury."

The Office found a conflict in medical opinion between appellant's physicians and Dr. Gott. It referred appellant, together with the record and a statement of accepted facts, to Dr. Rudolf A. Hofmann, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

On September 11, 2007 Dr. Hofmann reviewed appellant's history and present symptoms. He noted that the accepted condition was neck sprain. Dr. Hofmann described findings on physical examination and reviewed her medical record. He stated that appellant had been extensively evaluated, and physical examinations mentioned upper extremity radiculopathy and cervical myelopathy; however, no clinical neurologic objective findings consistent with a diagnosis of cervical radiculopathy or myelopathy were documented in the medical records or were present on the current physical examination.

Dr. Hofmann stated that, without a history of significant change in activity or further injury, appellant had an increase in neck symptoms in July 2007 associated with difficulty swallowing and swelling in the anterior neck region. MRI scan findings of an increased soft tissue signal anterior to the C4 vertebral body and C4-5 disc and laboratory tests were consistent with an inflammatory disorder. This, he stated, was interpreted as adjacent segment deterioration: "The contemporary literature no longer associates adjacent segment deterioration with prior fusion of a neighboring segment but interprets it as an expression of an underlying multi segment progressive spinal degenerative disorder."

With respect to the spinal cord lesion seen opposite the upper body of C5, Dr. Hofmann noted that appellant's five MRI scans were taken with different equipment and different techniques. The April 2004 MRI scan did not describe a signal abnormality within the cervical cord, and the July 2005 MRI scan did not describe typical recent trauma changes, such as cord edema or cord hemorrhage. He stated:

> "If an acute injury occurred on June 17, 2005 leading to an injury of the spinal cord it would be unlikely that by July 7, 2005 no other signs of recent injury would be present (such as edema or hemorrhage of the adjacent structures). The mechanism of injury of lifting baggage is not consistent with a significant injury to the spinal cord in the absence of a spinal compressive lesion at the level of the lesion. The more likely scenario is the progression of the degeneration of the disc at C4-5 adjacent to the prior fusion from C5 to C7. [Appellant's] clinical course of no improvement since June 17, 2005 and the spontaneous worsening in July of 2007 is also more consistent with a gradual degenerative condition than a one time injury on June 17, 2005."

Dr. Hofmann concluded that appellant's subjective findings of neck pain, made worse by use of the upper extremities with a painfully limited range of motion of the cervical spine but no objective neurological deficit, was consistent with the objective findings of degeneration of the disc at C4-5, which on MRI scan was characterized by a disc/osteophyte protrusion at C4-5 and recent inflammation of the C4-5 disc and prevertebral soft tissue. It was his opinion that the signal abnormality within the spinal cord at the level of C5, first appreciated on the July 7, 2005 MRI scan, was more likely due to the prior anterior cervical fusion from C5 to C7 in 2004 rather than to an injury within approximately three weeks prior to July 7, 2005.

Dr. Hofmann reported that appellant had no current objective residuals remaining as a result of the June 17, 2005 injury. "A specific anatomic structure which was injured on June 17, 2005 has not been identified." All the changes seen on x-ray and MRI scan were either related to her prior surgery or degenerative. None of the changes seen on imaging studies were specific for a traumatic condition. The same was true of her clinical findings. Dr. Hofmann added that, based on the demonstrated progressive degeneration of the C4-5 disc, consistent with her subjective symptoms, appellant was not able to engage in work without restrictions.

In an addendum dated October 18, 2007, Dr. Hofmann clarified that, based solely on the allowed condition of neck sprain, appellant would be able to return to her job as a transportation security screener as described in the statement of accepted facts. Appellant's work restrictions

were due to the preexisting progressive degenerative condition of her cervical spine, particularly at C4-5. They were not required as a result of the June 17, 2005 injury.

The Office determined that Dr. Hofmann's opinion created a conflict with Dr. Datta on the issue of disability causally related to the work injury. It referred appellant, together with the case record and a statement of accepted facts, to Dr. Pietro Seni, a Board-certified orthopedic surgeon, for an impartial evaluation of her continuing disability.

On January 23, 2008 Dr. Seni related appellant's history and present symptoms. He described his findings on physical examination and reviewed appellant's medical record. Dr. Seni reported that appellant's physical examination was completely within normal limits. Appellant did not demonstrate restriction of the neck muscles. There were no current objective findings to support that continuing residuals of the accepted neck sprain were still present and active. "It is my opinion the accepted condition has resolved entirely." Dr. Seni noted that a neck sprain should not last more than 60 days maximum. The average for a light injury was 17 days. "Obviously this injury occurred two and a half years ago and it is my opinion that a plain sprain/strain should have resolved in the time allowed according to the [Official Disability Guidelines]. Even the most severe sprain/strain should have resolved within 60 days maximum."

On March 13, 2008 the Office notified appellant that it proposed to terminate her compensation benefits on the grounds that the weight of the medical evidence, represented by the opinions of Dr. Hofmann and Dr. Seni, established that her work-related cervical strain had resolved, that she had no residuals of her work injury, that she was no longer disabled. It noted that any restrictions she needed were due to her nonwork-related neck condition, including the 2004 surgery.

In a decision dated April 29, 2008, the Office terminated appellant's compensation effective that date. Appellant requested a telephonic hearing before an Office hearing representative, which was held on August 26, 2008.

In a decision dated November 3, 2008, the Office hearing representative affirmed the termination of appellant's compensation for the accepted cervical sprain. The hearing representative found that the weight of the medical evidence rested with Dr. Seni.

LEGAL PRECEDENT -- ISSUE 1

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[1] Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.[2] After it has determined that an employee has disability causally related to her federal

[1] 5 U.S.C. § 8102(a).

[2] *Harold S. McGough*, 36 ECAB 332 (1984).

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]

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for cervical sprain and paid compensation for temporary total disability on the periodic rolls. It has the burden of proof to terminate benefits.

The Office accepted appellant's claim on the basis of the opinion of Dr. Gott, the orthopedic surgeon and second opinion physician. Appellant's orthopedic surgeon, Dr. Datta, was elusive about the nature of the injury or medical condition appellant sustained on June 17, 2005. He reported vague diagnoses such as a new onset of neck and right arm pain, a work-related injury with increased neck and bilateral arm pain, and a work-related injury resulting in neck and arm pain. It was not until January 31, 2006 that Dr. Datta offered a specific diagnosis of the employment injury: (1) disc herniation at C3-4 with radiculopathy into both arms and (2) a permanent aggravation of degenerative disc disease. He reported that these were caused by the accident on June 17, 2005. However, Dr. Datta did not explain how he came to diagnose a disc herniation at C3-4 with radiculopathy. It was he who recommended an MRI scan to rule out any new disc herniations. Dr. Datta stated in a January 31, 2006 report that he reviewed the July 7 and September 7, 2005 MRI scan films. The former report makes no reference to a disc herniation at that level, and the latter report states: "At C3-4, there is no significant disc abnormality, central canal stenosis or neuroforaminal encroachment." Dr. Datta also did not explain what objective findings supported his view that appellant sustained an aggravation of degenerative disc disease on June 17, 2005, nor did he explain why these diagnoses did not appear in his reports until six months after the injury.

The Office obtained a second opinion. Dr. Gott examined appellant and reviewed her record, including the reports and imaging studies generated by Dr. Datta. He could not identify any new neurocompressive pathology that might have resulted from the June 17, 2005 injury. The disc osteophyte complex seen at C6-7 in the MRI scans of July and September 2005 was a residual of her first surgery, and appellant related the chronic weakness in her right upper extremity to the weakness that occurred following her first disc injury in 2004. Dr. Gott was of the opinion that appellant sustained cervical strain on June 17, 2005 without additional neurocompressive injury. This appeared consistent with appellant's history of injury and with Dr. Datta's observation that appellant did very well from her surgery in 2004, with significant improvement of both neck and arm pain, and then suffered a new onset of pain on June 17, 2005. The Office therefore accepted appellant's claim for cervical sprain and paid compensation.

On January 23, 2008 Dr. Seni reported that appellant's physical examination was completely within normal limits. Appellant did not have restriction of the neck muscles on examination. There were no current objective findings to support that continuing residuals of the accepted neck sprain were still present and active. So it was Dr. Seni's opinion that the accepted condition had resolved entirely. Further, resolution of the accepted condition made broad sense

[3] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

because he reasoned that a neck sprain should not last more than 60 days, according to official disability guidelines, and appellant's neck sprain occurred two and a half years earlier.

The Board finds that Dr. Seni's opinion represents the weight of the medical evidence on the issue of whether appellant continued to suffer from the accepted cervical sprain. It is important to note that appellant's physicians focused on other matters -- intervertebral discs, radiculopathy, spinal cord injury -- and did not directly address whether appellant continued to suffer from the accepted medical condition. So there was no conflict in medical opinion on this particular issue. For this reason, Dr. Seni should not be regarded as an impartial medical specialist but as a second opinion physician. Although appellant gave him a history of injury that varied in small detail from her contemporaneous account, the Board finds that Dr. Seni had a good factual and medical foundation of his opinion, and he offered what appears to be a sound and rational medical opinion on the narrow issue of whether appellant continued to suffer from the accepted cervical sprain. The Board will therefore affirm the Office hearing representative's November 3, 2008 decision affirming the termination of appellant's compensation for the accepted condition of cervical sprain.

On appeal, appellant's attorney takes issue with Dr. Seni's status as an impartial medical specialist because he was partners with Dr. Hofmann, who previously examined appellant.[4] But Dr. Seni was not an impartial medical specialist on the issue of continuing residuals of the accepted cervical sprain, and the letterhead of the two physicians does not demonstrate they were partners.[5] Appellant's representative also takes issue with Dr. Seni's statements with respect to other medical conditions, but those statements are immaterial to the Office's termination of compensation for the accepted condition of cervical sprain. Counsel notes that Dr. Seni inaccurately described what happened on July 17, 2005. Dr. Seni was simply relating what appellant had told him, and he related this history only to explain how the mechanism of injury was inconsistent with a spinal cord lesion, which again is immaterial to the question raised by the Office's termination of benefits. Counsel noted that appellant had a preexisting cervical fusion and that her cervical condition was permanently aggravated by her accepted injury. However, Dr. Seni was aware of appellant's preexisting cervical condition and found no restriction of her neck muscles on physical examination and no current objective findings to support that continuing residuals of the accepted cervical sprain were still present and active. The weight of medical opinion does not support appellant's contentions.

LEGAL PRECEDENT -- ISSUE 2

A claimant seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,[6]

[4] *See Raymond E. Heathcock*, 32 ECAB 2004 (1981) (holding that the Office could not use the report of one physician to resolve a conflict in medical evidence because he was an associate of another physician previously connected with the case, and therefore was not completely independent).

[5] The letterhead suggests that the Office found Dr. Hofmann and Dr. Seni through a service that networks physicians in the Dayton area. It does not show that they are associates or partners in the same medical practice.

[6] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

including that she sustained an injury in the performance of duty and that her disability for work, if any, was causally related to the employment injury.[7]

Causal relationship is a medical issue,[8] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's opinion on whether there is a causal relationship between the claimant's diagnosed condition and the implicated factors of employment. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

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.[10] When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[11]

ANALYSIS -- ISSUE 2

The Office that the weight of the medical evidence did not establish a causal relationship between the work incident on June 17, 2005 and other suggested diagnoses. Appellant bears the burden of proof to establish such a causal relationship and her entitlement to appropriate compensation benefits.

As noted Dr. Datta's opinion was unrationalized in addressing how the June 17, 2005 incident at work caused a disc herniation at C3-4 with radiculopathy into both arms and a permanent aggravation of degenerative disc disease. This evidence had too little probative value to support a conflict warranting referral to an impartial medical specialist. Dr. Datta also noted what appeared to be a spinal cord abnormality at approximately the C4-5 level on MRI scan, representing either a focal collection of hemosiderin or capillary telangiectasia. But he refrained from associating this diagnosis with the June 17, 2005 work incident. After comparing appellant's April 2004 MRI scan, he reported that it might indicate something preexisting. So on this point as well, Dr. Datta's opinion did not establish a causal relationship to the work incident on June 27, 2005.

[7] *Elaine Pendleton*, 40 ECAB 1143 (1989); *see Daniel R. Hickman*, 34 ECAB 1220 (1983).

[8] *Mary J. Briggs*, 37 ECAB 578 (1986).

[9] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[10] 5 U.S.C. § 8123(a).

[11] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

Dr. Shenoy, appellant's neurologist, reported that the 2004 MRI scan showed no evidence of a spinal cord injury or spinal cord compression, but the postinjury MRI scan in July 2005 suggested a signal abnormality at C4-5, which reflected focal hemosiderin deposits consistent with a spinal cord trauma. Appellant did not have symptoms after the initial surgery to explain the lesion. Dr. Shenoy concluded that it was most likely that she suffered a spinal cord injury on June 17, 2005 and all of her current symptoms were probably a result of the spinal cord injury.

This created a conflict with Dr. Gott, who reported that the June 17, 2005 incident caused a cervical strain without neurocompressive injury. It was therefore appropriate for the Office to refer appellant to Dr. Hofmann, a Board-certified orthopedic surgeon, for an impartial medical evaluation pursuant to section 8123(a) of the Act.

The Office provided Dr. Hofmann with the case record and a statement of accepted facts so he could base his opinion on a proper foundation. Dr. Hofmann examined appellant and reviewed her record. He stated that no clinical neurologic objective findings consistent with a diagnosis of cervical myelopathy were documented in the medical records or on appellant's current physical examination. Like Dr. Shenoy, Dr. Hofmann compared the April 2004 and July 2005 MRI scans, but he came to a different conclusion. He agreed with Dr. Shenoy that the April 2004 MRI scan did not describe a cord lesion, but neither did the July 7, 2005 MRI scan, only three weeks after the employment injury, describe typical recent trauma changes. Dr. Hofmann answered Dr. Shenoy's conclusion by reasoning that if an acute injury occurred on June 17, 2005 leading to an injury of the spinal cord, it would be unlikely that by July 7, 2005 no other signs of recent injury would be present, such as edema or hemorrhage of the adjacent structures. He also reasoned that the mechanism of injury of lifting baggage was not consistent with a significant injury to the spinal cord in the absence of a spinal compressive lesion. In his view, the signal abnormality first appreciated on the July 7, 2005 MRI scan was more likely due to the prior anterior cervical fusion from C5 to C7 in 2004. Appellant's symptoms were more likely due to the progression of the degeneration of the disc at C4-5 adjacent to the prior fusion. Her clinical course of no improvement since June 17, 2005 and the spontaneous worsening she suffered in July 2007 was likewise consistent with a gradual degenerative condition than a one-time injury on June 17, 2005.

The Board finds that Dr. Hofmann's opinion is based on a proper factual and medical background and is sufficiently well reasoned that it must be accorded special weight in resolving the conflict on whether the work incident on June 17, 2005 caused a spinal cord injury. Appellant has not met her burden of proof on this point. Nor does the medical evidence establish that the June 17, 2005 incident caused a herniated disc at C3-4 with radiculopathy or a permanent aggravation of her degenerative disc disease.

On appeal, it was argued that Dr. Hofmann did not consider the effect a strain or sprain would have on a preexisting surgical hardware type change and did not acknowledge that appellant returned to work for approximately one year following her fusion surgery before suffering an injury on June 17, 2005. The representative suggests a permanent aggravation. However, Dr. Hofmann, a Board-certified orthopedic surgeon, acknowledged that appellant felt better after her 2004 surgery, that follow-up x-rays showed a solidly-healed fusion, and that she was able to return to work six weeks after the operation. Appellant worked until June 27, 2005.

Dr. Hofmann based his opinion on a good factual and medical foundation and did not support that appellant's preexisting cervical condition was permanently aggravated by his accepted injury.

CONCLUSION

The Board finds that the Office has met its burden to justify the termination of appellant's compensation for the accepted medical condition of cervical sprain. The Board also finds that appellant has not met her burden to establish that the work incident on June 17, 2005 caused another medical condition, such as a disc herniation at C3-4 with radiculopathy, a permanent aggravation of her degenerative disc disease or a spinal cord injury.

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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