



In a letter dated April 25, 2003, the employing establishment terminated appellant's employment effective May 9, 2003 on the grounds that her conduct as a licensed practical nurse was not satisfactory, particularly in leave usage.<sup>1</sup> The Office paid temporary total disability compensation from May 10 through July 16, 2003.

Appellant filed claims for compensation (Form CA-7) from July 17 through August 3, 2003. In a July 16, 2003 report, Dr. Thomas Muzzonigro, a Board-certified orthopedic surgeon, noted that she sustained a cervical strain at work on April 8, 2003 and had underlying degenerative cervical spondylosis. Appellant reported paresthesias in the bilateral upper extremities in a vague distribution. She was doing better and had increasing range of motion of her neck and shoulders with decreasing pain. On examination, appellant had excellent range of motion of the cervical spine, negative Spurling test bilaterally and equal and symmetric reflexes. Dr. Muzzonigro diagnosed resolved cervical strain and underlying degenerative cervical spondylosis with intermittent paresthesias. He advised that appellant could return to work at full duty. Appellant could follow up with Dr. Muzzonigro as needed.

In an August 20, 2003 decision, the Office denied appellant's claim for compensation from July 17 to August 3, 2003. It found that the medical evidence did not establish her disability for the claimed period.

On August 20, 2003 the Office also issued a proposed notice of termination of compensation benefits. It found that the medical evidence established that appellant no longer had any continuing residuals or total disability causally related to the April 8, 2003 injury. Appellant was accorded 30 days to submit additional evidence or argument. No additional information was received.

By decision dated September 26, 2003, the Office finalized the termination of appellant's compensation benefits effective that date.

Appellant disagreed with the Office's August 20 and September 26, 2003 decisions and requested an oral hearing, which was held on July 1, 2004. She submitted a September 3, 2003 treatment note from Butler Memorial Hospital for chronic neck, right shoulder and right arm pain, a November 3, 2003 surgical report for a right carpal tunnel release; a September 15, 2003 electromyogram (EMG) report noting moderate right carpal tunnel syndrome and possible right chronic C8 cervical nerve root irritation; an April 23, 2003 cervical spine x-ray report; and physical therapy and chiropractic treatment notes.

In a July 15, 2004 report, Dr. Edward D. Reidy, a Board-certified physiatrist, reviewed the history of appellant's work injury and prior evaluations on February 13 and March 26, 2004. Following the initial evaluation, appellant underwent diagnostic testing which showed a very mild slowing of the median nerve of the right wrist which lead to surgery that resolved her numbness. The diagnosis was of a C8 nerve root impingement, considered by Dr. Reidy to be soft. Dr. Reidy opined that appellant's current paracervical symptoms were directly related to the work injury. He explained that appellant's underlying degenerative cervical spondylosis with

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<sup>1</sup> Appellant was terminated during her probationary period.

intermittent paresthesia was asymptomatic prior to the work injury and became symptomatic after the injury.

On January 12, 2005 an Office hearing representative set aside the August 20 and September 26, 2003 decisions and directed the Office to refer appellant for a second opinion to determine whether her preexisting condition was aggravated by the work injury and, if so, the extent and duration of any aggravation.

The Office referred appellant to Dr. Alexander L. Bell, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a March 2, 2005 report, Dr. Bell stated that he did not believe the injury as described was the primary cause of aggravation of appellant's significant and diffused preexisting conditions. He stated that appellant had significant cervical spine pathology with no evidence of specific treatable lesions either on physical examination, magnetic resonance imaging (MRI) scan or nerve conduction studies. Dr. Bell opined that, while appellant sustained a cervical strain as a result of the work injury, this would not be a significant contributing factor to her underlying conditions as it was doubtful that the cervical strain could result in her inability to work for a period of three to four months after the injury, *i.e.*, from July 17 through August 3, 2003. He prescribed physical restrictions and recommended a functional capacity evaluation (FCE) to assess work restrictions. Appellant underwent an FCE on April 18, 2005. In a July 13, 2005 report, Dr. Bell advised that her ongoing work restrictions were for the preexisting cervical disease. He opined that the work injury on April 8, 2003 did not have a significant impact on appellant's preexisting conditions and she did not have any continuing aggravation of her preexisting cervical condition as the accepted cervical and right shoulder strains had resolved.

On July 27, 2005 the Office denied disability compensation benefits for the period July 1 through August 3, 2003. It found that the weight of the medical evidence supported that the accepted work injuries had resolved.

Appellant requested an oral hearing that was held on May 25, 2006. On August 9, 2006 an Office hearing representative vacated the July 27, 2005 decision and directed the Office to obtain an impartial medical examination to resolve the conflict in medical opinion between Dr. Reidy and Dr. Bell as to whether she sustained an aggravation of her underlying cervical spondylosis causing disability and residuals of her work-related injury after July 16, 2003.

The Office referred appellant to Dr. Jon A. Levy, a Board-certified orthopedic surgeon, for an impartial medical examination. In a November 1, 2006 report, Dr. Levy reviewed the statement of accepted facts and the medical and factual evidence. He noted appellant's complaints of paracervical pain and paresthesias in the right hand and reported examination findings relative to range of motion of the neck and shoulders and strength in the upper extremities. Dr. Levy reviewed the diagnostic evidence, including MRI scans of the cervical spine dated April 28, 2003 and October 15, 2004 and x-rays of the cervical spine dated April 23, 2003. He addressed Dr. Reidy's July 15, 2004 report and commented that he did not follow the logic for concluding that because appellant had benefited from steroid injections her cervical condition was considered work related. Dr. Levy stated that, although appellant had clinical relief with cervical injections, this benefit could occur whether her cervical symptoms were degenerative in nature or work related. He diagnosed cervical degenerative disc disease,

resolved cervical strain and right-sided carpal tunnel syndrome. Dr. Levy opined that appellant sustained a cervical strain in the April 8, 2003 work incident but had not aggravated her preexisting degenerative disc disease based on his findings and on Dr. Muzzonigro's July 16, 2003 evaluation. Appellant had subjective complaints of neck pain and paresthesias in her right hand but denied arm pain and had no radicular symptoms down her right arm. She exhibited a normal neurologic examination and from an objective standpoint no clinical abnormalities were manifested. Dr. Levy noted a similar lack of objective clinical abnormalities in Dr. Muzzonigro's July 15, 2003 examination and report. He concluded that appellant did not sustain an aggravation of her preexisting cervical degenerative disc disease but rather a cervical strain that had resolved as of July 16, 2003, the date of Dr. Muzzonigro's evaluation.

In a June 26, 2006 report, Dr. T.T. Channapati, a Board-certified family practitioner, noted that appellant had been experiencing numbness and loss of control in both hands.

By decision dated November 27, 2006, the Office denied wage-loss compensation for the period July 17 through August 3, 2003. It found that it had properly terminated appellant's compensation benefits on the basis that she had no ongoing residuals of the April 8, 2003 work injury. Special weight was accorded to Dr. Levy's impartial medical examination.

Appellant disagreed with the Office's decision and requested an oral hearing. By decision dated January 7, 2008, an Office hearing representative vacated the decision and remanded the case for further development on whether Dr. Levy was properly selected under the Physicians Directory System (PDS). On January 10, 2008 the Office subsequently confirmed that its records established that Dr. Levy was properly selected.

Appellant requested an oral hearing, which was held telephonically on June 17, 2008. After the hearing, the Office received an April 18, 2006 report from Dr. Nishita Knechtel, a psychiatrist, who diagnosed recurrent major depressive disorder. Office treatment records from Dr. Channapati and Dr. Sheila Balestrino, a Board-certified family practitioner, from July 11, 2005 and continuing and a September 27, 2007 decision from the Social Security Administration (SSA) approving benefits.

In a June 11, 2007 report, Dr. Ronald L. Zimmerman, a Board-certified physiatrist, noted the history of injury and set forth findings on examination. He listed findings of nerve conduction studies and electromyogram. Dr. Zimmerman found that there were electrical findings for a moderate left carpal tunnel syndrome but no electrical findings for a recurrent right carpal tunnel syndrome or for an acute localized cervical radiculopathy. He noted diagnostic findings for a chronic bilateral C6 and/or C7 cervical radiculopathy, which he opined were residuals of old nerve root irritation versus chronic irritation.

By decision dated September 5, 2008, an Office hearing representative affirmed the January 10, 2008 decision.

## LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of proof to establish the essential elements of her claim by the weight of the evidence.<sup>3</sup> For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.<sup>4</sup> Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.<sup>5</sup>

Under the Act, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>6</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.<sup>7</sup> An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.<sup>8</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.<sup>9</sup>

The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.<sup>10</sup> To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>11</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *J.P.*, 59 ECAB \_\_\_\_ (Docket No. 07-1159, issued November 15, 2007); *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

<sup>4</sup> See *Amelia S. Jefferson*, *supra* note 3; see also *David H. Goss*, 32 ECAB 24 (1980).

<sup>5</sup> See *G.T.*, 59 ECAB \_\_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>6</sup> *D.M.*, 59 ECAB \_\_\_\_ (Docket No. 07-1230, issued November 13, 2007); *S.M.*, 58 ECAB \_\_\_\_ (Docket No. 06-536, issued November 24, 2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

<sup>7</sup> *D.M.*, *supra* note 6; *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>8</sup> *Roberta L. Kaaumoana*, *supra* note 7; *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>9</sup> *D.M.*, *supra* note 6.

<sup>10</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>11</sup> See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

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

Appellant filed a claim for wage-loss compensation alleging that she was disabled for work during the period July 17 through August 3, 2003. She submitted no medical evidence through demonstrating total or partial disability for this period of time due to her accepted conditions of cervical strain and right shoulder strain.

The evidence relevant to appellant's claim for disability included reports from Dr. Muzzonigro. In his July 16, 2003 report, Dr. Muzzonigro opined that appellant's cervical spine had resolved and that she could return to work full duty. Appellant submitted no medical evidence supporting her claim that she was unable to work from July 17 through August 3, 2003 due to residuals of her accepted conditions. Further, the medical examination clearly has established no residuals of any accepted condition. Appellant has failed to establish that she was disabled, and thus, is not entitled to wage-loss compensation for the period claimed. She has not established her claim for wage-loss compensation from July 17 through August 3, 2003.

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

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>12</sup> After it has determined that an employee has disability causally related to 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.<sup>13</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>14</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>15</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>16</sup>

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

Appellant's claim for an injury on April 8, 2003 was accepted for a cervical strain and right shoulder strain. The Office accepted the claim and paid benefits. Following receipt of a July 16, 2003 report from Dr. Muzzonigro, appellant's treating physician, it terminated compensation benefits.

In a July 16, 2003 report, Dr. Muzzonigro noted that appellant's cervical strain had resolved and he indicated that her degenerative cervical spondylosis was an underlying

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<sup>12</sup> *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>13</sup> *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>14</sup> *See Del K. Rykert*, 40 ECAB 284 (1988).

<sup>15</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>16</sup> *T.P.*, 58 ECAB \_\_ (Docket No. 07-60, issued May 10, 2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

condition. He noted examination findings that included excellent range of motion of the cervical spine. Dr. Muzzonigro opined that appellant could return to work full duty.

The Board notes that, at the time of Dr. Muzzonigro's report, there was no current medical evidence supporting that appellant had a continuing work-related condition. Dr. Muzzonigro was appellant's treating physician and found that her cervical strain had resolved and that she could return to full-duty work. He indicated that appellant had some symptoms due to her underlying degenerative cervical condition, but he found no basis on which to attribute any continuing condition or disability to the accepted work injury. Consequently, the Board finds that, at the time the Office terminated benefits effective September 26, 2003, the weight of the medical evidence rested with Dr. Muzzonigro and established that appellant's work-related injury had resolved without residual.

### **LEGAL PRECEDENT -- ISSUE 3**

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant.<sup>17</sup> In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors.<sup>18</sup> The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.<sup>19</sup>

Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee of the Secretary shall appoint a third physician who shall make an examination.<sup>20</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 a proper factual and medical background, must be given special weight.<sup>21</sup>

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<sup>17</sup> See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

<sup>18</sup> *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>19</sup> *Bobbie F. Cowart* *supra* note 6; *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>20</sup> 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).

<sup>21</sup> *Darlene R. Kennedy*, 57 ECAB 414 (2006).

### ANALYSIS -- ISSUE 3

The Board finds that appellant has not established that she has any continuing residuals or disability after September 26, 2003 causally related to her April 8, 2003 work injury. After the Office properly terminated compensation benefits, appellant submitted medical evidence from Dr. Reidy supporting that she continued to have a work-related condition. As noted, a hearing representative found this evidence sufficient to require further medical development.

Dr. Bell, an Office referral physician, opined that in his March 2, 2005 report that appellant's cervical strain had resolved and it would not result in her inability to work on and after July 17, 2003. He further opined that appellant did not sustain an aggravation of her preexisting cervical condition as a result of the work injury. As there was a dispute between appellant's treating physician and the second opinion physician as to whether appellant had any remaining condition or disability causally related to the April 8, 2003 employment injury, the Office properly referred her case to Dr. Levy, for an impartial medical examination.<sup>22</sup>

The Board finds that Dr. Levy, the impartial medical specialist and Board-certified orthopedic surgeon, based his opinion on a proper factual and medical background. Dr. Levy was provided with a copy of the entire case file, a list of questions and a statement of accepted facts. He set forth the results of his physical examination and opined that the cervical strain from the April 8, 2003 employment incident had resolved as of July 16, 2003 and appellant did not sustain an aggravation of her preexisting cervical degenerative disc disease. Dr. Levy indicated that appellant had a normal neurologic examination and no objective clinical abnormalities were manifested on her November 1, 2006 examination. He noted a similar lack of objective clinical abnormalities from Dr. Muzzonigro's July 16, 2003 examination and report. Based on Dr. Muzzonigro's July 16, 2003 evaluation findings and his own evaluation on November 1, 2006, Dr. Levy concluded that appellant did not sustain an aggravation of her preexisting degenerative disc disease and the cervical strain had resolved as of July 16, 2003.

Dr. Levy offered a medical opinion that is sound, rational and logical. Because the opinion of the impartial medical specialist is based on a proper history and is sufficiently rationalized, the Board finds that it must be accorded special weight in resolving the conflict and establishing that appellant had no work-related condition or disability after September 26, 2003.

Subsequent to Dr. Levy's opinion, appellant submitted medical reports and treatment notes from Drs. Balestrino, Channapati and Knechtel. The physicians, however, did not address the relevant issue of whether any diagnosed medical conditions were causally related to the April 8, 2003 work injury. Thus, their reports are insufficient to overcome the special weight accorded to the impartial medical examiner or to create a new conflict.<sup>23</sup>

In a June 11, 2007 report, Dr. Zimmerman noted electrical findings for a chronic bilateral C6 and/or C7 cervical radiculopathy. He opined that this was due to residuals of an old nerve root irritation versus chronic irritation. However, Dr. Zimmerman did not directly address the

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<sup>22</sup> *Id.*

<sup>23</sup> *Barbara J. Warren*, 51 ECAB 413 (2000).

pertinent issue of whether appellant's current radiculopathy was due to the April 8, 2003 work injury. Appellant contends on appeal, that Dr. Levy's opinion cannot be considered complete as he did not have the June 2007 EMG scan results reported by Dr. Zimmerman. While Dr. Levy obviously did not have test results obtained subsequent to his examination, he gave no indication in his report that there was a need for additional testing and he noted reviewing relevant testing that was of record at the time of his examination. Thus, the evidence does not support that Dr. Levy's report was incomplete.

While appellant submitted a determination by the SSA to bolster her claim of disability, the Board has long held that a determination made by another administrative agency regarding disability is not determinative of the extent of physical disability or impairment for compensation purposes under the Act. The relevant statutes have different standards of medical proof and the question of disability found less than one statute does not prove disability under the other.<sup>24</sup>

Appellant generally contends on appeal, that Dr. Reidy's opinion of July 15, 2004 unequivocally states, and proves, that she sustained an ongoing work-related injury and there was never any need for further examination directed by the Office. This argument is without merit. Dr. Reidy's July 15, 2004 report was one side of a medical conflict that was resolved by Dr. Levy. As noted, section 8123(a) provides a mechanism for resolving a medical conflict<sup>25</sup> and the Office properly followed the statute in this regard. Regarding counsel's assertion that Office directed medical examinations were unnecessary, it has the discretion to have a claimant submit to an examination by a physician designated or approved by the Office as frequently and at the times and places as may be reasonably required.<sup>26</sup> There is no evidence establishing that the Office acted unreasonably in developing the medical evidence in this claim.

### CONCLUSION

The Board finds that appellant failed to establish that entitlement to wage-loss benefits for the period of disability from July 17 through August 3, 2003. The Board further finds that the Office met its burden of proof to terminate appellant's compensation benefits effective September 26, 2003 and she has not established that she had any disability or residuals after September 26, 2003 causally related to her April 8, 2003 employment injury.

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<sup>24</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>25</sup> *See supra* notes 20 and 21.

<sup>26</sup> *William B. Webb*, 56 ECAB 156 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated September 5, 2008 is affirmed.

Issued: October 7, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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