

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

C.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Atlanta, GA, Employer)

**Docket No. 09-2192
Issued: June 11, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 31, 2009 appellant filed a timely appeal from an August 17, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate compensation for wage-loss and medical benefits effective July 4, 2009.

FACTUAL HISTORY

The case has previously been before the Board. The instant case involves a March 18, 1993 injury that was accepted for cervical and right shoulder strain. In a December 20, 1996 decision, the Office reduced appellant's compensation pursuant to 5 U.S.C. § 8113(b) for failure to complete a vocational rehabilitation plan. By decision dated December 23, 1998, the Board affirmed the December 20, 1996 decision.¹ In a January 24, 2002 decision, the Board affirmed

¹ 50 ECAB 200 (1998).

September 1, 1999 and February 29, 2000 Office decisions denying a recurrence of disability commencing May 27, 1999.² In a decision dated July 21, 2009, the Board affirmed Office decisions dated June 13 and October 2, 2008, suspending appellant's compensation under 5 U.S.C. § 8123(d).

The Board notes that appellant also had claims for injury on November 6, 1990, accepted for cervical strain and a February 12, 1992 claim, accepted for cervical and thoracic strains.³ The history of the case as provided in the Board's prior decisions is incorporated herein by reference.

Appellant received compensation under the December 20, 1996 Office decision. The Office subsequently referred her, with medical records and a statement of accepted facts, for a second opinion examination by Dr. Sarveswar Naidu, an orthopedic surgeon. In a report dated July 24, 2008, Dr. Naidu provided a history and results on examination. He diagnosed resolved right shoulder and cervical strains. Dr. Naidu stated that appellant had no positive findings for any neurological deficit, cervical spondylosis or strain. He reported subjective complaints of neck pain and shoulder range of motion limitations were exaggerated and did not correspond with objective findings. Dr. Naidu concluded that appellant did not have any residuals of the March 18, 1993 injury.

In a letter dated August 25, 2008, the Office requested that the attending orthopedic surgeon, Dr. Pran Sood, review the report of Dr. Naidu and provide comments. In a September 4, 2008 report, Dr. Sood advised that he had not treated appellant since October 3, 2007.

By letter dated May 4, 2009, the Office notified appellant it proposed to terminate her compensation based on the weight of the medical evidence. It also stated that it proposed to modify her wage-earning capacity to zero.

On May 25, 2009 appellant contended that the statement of accepted facts was not complete and Dr. Naidu did not represent the weight of the evidence. In a May 27, 2009 report, Dr. Sood noted that appellant complained of neck and right shoulder pain. He provided results on examination and diagnosed cephalgia post-traumatic with possible three trigger spots on the right side.

By decision dated June 26, 2009, the Office terminated appellant's compensation benefits effective July 4, 2009. It also stated that compensation for wage loss had been modified to zero.

In a letter received by the Office on July 6, 2009, appellant requested reconsideration. She argued that Dr. Naidu was not entitled to special weight as he was not an independent medical examiner, the statement of accepted facts was insufficient and the Office did not meet its

² Docket No. 00-2169 (issued January 24, 2002).

³ With respect to the November 6, 1990 injury, an October 28, 1994 Board decision reversed a suitable work termination and a January 7, 1992 wage-earning capacity determination. Docket No. 93-371 (issued October 24, 1994). In an August 3, 1995 decision, the Board reversed Office decisions dated October 18, July 15 and May 13, 1993 regarding compensation commencing August 27, 1992. 46 ECAB 963 (1995).

burden of proof. On July 5, 2009 appellant contended that the Office did not address the December 20, 1996 wage-earning capacity determination, which remained intact until modified. She did not submit additional medical evidence.

By decision dated August 17, 2009, the Office reviewed the case on its merits and denied modification of the prior decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that, an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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.⁵

Rationalized medical opinion evidence is medical evidence based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

ANALYSIS

In the present case, the Office terminated appellant's compensation for wage-loss and medical benefits effective July 4, 2009 based on the weight of the medical evidence as represented by second opinion examiner, Dr. Naidu. In a July 24, 2008 report, Dr. Naidu provided a rationalized medical opinion finding that the accepted conditions of cervical and right shoulder strains had resolved. He noted the results of diagnostic testing and the lack of objective evidence to support appellant's complaints. The Board finds that Dr. Naidu provided a probative medical report on the issue presented that supports a finding that the accepted March 18, 1993 injuries had resolved.

The Office sought a medical opinion in 2008 from attending physician, Dr. Sood, on the issue of continuing employment-related disability; however, he did not submit a report addressing the issue. Dr. Sood provided a brief report on May 27, 2009 that diagnosed post-traumatic cephalgia without providing a complete medical background or an opinion that such condition was due to the accepted injury. Based on the evidence of record, the Board finds that the weight of the evidence rests with Dr. Naidu.

⁴ *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

⁵ *Furman G. Peake*, 41 ECAB 361 (1990).

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

The Board notes that appellant contends that Dr. Naidu was not entitled to “special weight” as he was not a referee physician.⁷ Dr. Naidu was found to represent the weight of the medical evidence because he provided a rationalized medical opinion. He provided a second opinion evaluation and was not selected as an impartial referee. Appellant also argued that Dr. Naidu did not have a complete factual background; but the statement of accepted facts provided a history of the March 16, 1993 injury, the accepted conditions and noted two prior claims that included accepted cervical injuries.⁸ Dr. Naidu had an accurate medical background and provided an accurate history in his report. There is no evidence that he lacked an accurate factual or medical background.

Another issue raised by appellant concerns the modification of a wage-earning capacity determination. While the December 20, 1996 Office decision cited 5 U.S.C. § 8115,⁹ the decision, as the Board clearly discussed in its December 23, 1998 decision, was based on 5 U.S.C. § 8113(b). The Office reduced appellant’s compensation based on “what would probably have been” her wage-earning capacity had she not failed to continue vocational rehabilitation. This reduction continues “until the individual in good faith complies with the direction of the Secretary.”¹⁰ A modification can be based on a material change in the nature and extent of the injury-related condition and the Office cited the evidence from Dr. Naidu that the accepted conditions had resolved.¹¹ There is no evidence the June 26, 2009 decision was not in accord with the December 20, 1996 Office decision.

CONCLUSION

The Board finds that the Office properly terminated compensation for wage-loss and medical benefits effective July 4, 2009.

⁷ A referee physician is a physician selected to resolve a conflict under 5 U.S.C. § 8123(a). 20 C.F.R. § 10.321. A rationalized medical report from a referee physician is entitled to special weight. *Elaine Sneed, supra* note 4.

⁸ Appellant argued that the accepted prior injuries were strains, not sprains as reported in the SOAF, but the diagnoses are often used in conjunction and there is no indication that Dr. Naidu’s opinion was based on a distinction between a strain and sprain in the 1990 and 1992 injuries.

⁹ Pursuant to this section the wage-earning capacity of an employee is determined by actual earnings if they fairly and reasonably represent wage-earning capacity, or if not wage-earning capacity is determined by a selected position with due regard to relevant factors.

¹⁰ 5 U.S.C. § 8113(b).

¹¹ See *Harley Sims, Jr.*, 56 ECAB 320 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 17 and June 26, 2009 are affirmed.

Issued: June 11, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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