



In a report dated March 6, 2003, Dr. Lisa Grant, Board-certified in physical medicine and rehabilitation, advised that appellant had complaints of chronic low back pain, bilateral sacroiliitis and radicular symptoms in the lower extremities. She related that appellant experienced considerable difficulty working due to her low back pain. Dr. Grant stated that appellant was not able to do any kneeling, bending, standing or walking; she opined that appellant's pain was too severe to return to work and advised that she also experienced depression. She recommended a course of physical therapy to deal with her back pain and referral to a psychiatrist to deal with her depression. Dr. Grant opined that appellant would benefit from a trial of epidural steroid injections.

In order to determine appellant's current condition and to ascertain whether she still suffered residuals from her accepted condition, the Office referred appellant for a second opinion examination with Dr. Norman Pollak, Board-certified in orthopedic medicine. In an April 9, 2003 report, Dr. Pollak stated that based on his examination that there were no objective or consistent subjective findings to indicate a disabling or pathological condition. He advised that he was not able to make a diagnosis in regards to appellant's continued complaints of low back and ankle pain. Dr. Pollak stated that there was insufficient medical evidence to support her accepted conditions of lumbar strain, bilateral ankle strain and bilateral ankle tendinitis, which had resolved. He noted that lumbosacral x-rays were normal and opined that appellant did not appear to have any residuals aside from her continued complaints of pain. Dr. Pollak concluded that she could perform her job as a mail handler without restrictions.

In a report dated June 12, 2003, Dr. Grant noted that appellant was no longer working at the employing establishment because her position was not currently available. She stated, however, that she believed that appellant would be unable to perform her work anyway because she could not do any prolonged standing or sitting secondary to her back pain. Dr. Grant expressed her disagreement with Dr. Pollock's opinion that appellant's lumbar strain had resolved. She advised that appellant continued to experience bilateral sacroiliitis, although she noted that this injury typically resolved within a couple of months of treatment. Dr. Grant was not able to explain why appellant's pain had not responded to treatment, but stated that she still appeared to have a significant amount of pain. She noted that appellant had depression secondary to her pain and opined that she was not getting the treatment needed. Dr. Grant advised that she had treated appellant with physical therapy and epidural injections; however, she had not obtained any relief and Dr. Grant advised that appellant was required treatment from a chronic pain clinic.

The Office found that there was a conflict in the medical evidence between appellant's treating physician, Dr. Grant, who opined that appellant was totally disabled and still had residuals from her accepted conditions, and Dr. Pollak, the second opinion physician, who opined that appellant's accepted conditions had resolved and that she was able to perform her date-of-injury job without restrictions. It referred the case to a referee medical specialist, Dr. Kanwaldeep S. Sidhu, a Board-certified orthopedic surgeon, on December 9, 2003. In a February 10, 2004 report, Dr. Sidhu reviewed the medical history and statement of accepted facts and stated findings on examination. He advised that there was no objective evidence to indicate that appellant currently had any disability. Dr. Sidhu noted that she complained of lower back pain but did not indicate that she had pain in either ankle. He stated that appellant had no muscular atrophy and no sensory deficits; she showed obvious signs of exaggeration and

possible malingering. Dr. Sidhu stated that her magnetic resonance imaging (MRI) scan demonstrated degenerative changes physiologic with her age and noted that her lumbar x-rays were normal.

Dr. Sidhu concluded that appellant could return to work without restrictions. He opined that she did not require any further treatment due to her February 2000 work injury.

On January 18, 2007 the Office asked the referee physician, Dr. Sidhu, to reevaluate appellant and issue a new impartial report in light of the length of time that had elapsed since he submitted his February 10, 2004 report.<sup>1</sup> In a report dated February 16, 2007, Dr. Sidhu stated that there were no objective findings, which indicated that she still had residuals from her work-related lumbar strain, bilateral ankle strain and bilateral ankle tendinitis. He stated that these soft tissue symptoms had long resolved and stated that there was no objective basis to explain appellant's current symptoms. Dr. Sidhu noted that her imaging studies and x-rays did not indicate a structural injury to the spine. He advised that appellant was able to perform the duties of a mail handler without restrictions.

On February 27, 2007 the Office issued a notice of proposed termination of compensation to appellant. It found that the weight of the medical evidence, as represented by Dr. Sidhu's referee opinion, established that her accepted, employment-related lower back and right ankle conditions had resolved. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination.

By decision dated April 4, 2007, the Office terminated appellant's compensation, finding that Dr. Sidhu's opinion represented the weight of the medical evidence.

On May 1, 2007 appellant's attorney requested an oral hearing, which was held on September 26, 2007.

In a September 18, 2007 report, Dr. Charles G. Kissel, a specialist in podiatry, noted that he had treated appellant for foot pain since the February 2000 work injury. He stated that the incident had aggravated and worsened her foot pain. Dr. Kissel advised that appellant had developed chronic degenerative changes in the subtalar joint and chronic tendinitis in the posterior tibial tendon; he had treated her condition conservatively with bracing, injection therapy, etc. He stated that she had long-term partial disability due to her inability to use her foot for standing, walking, lifting or carrying. Dr. Kissel opined with absolute certainty that the tendon injury aggravated, worsened and caused additional degenerative changes in the subtalar joint, which was now the main area of disability.

In a report dated October 1, 2007, Dr. Jeffrey Kimpson, Board-certified in anesthesiology and a specialist in pain management, stated that he had been treating appellant for her low back pain since June 2002. He advised that, in his most recent evaluation on September 20, 2007, she had continued complaints of persistent low back pain radiating down both lower extremities.

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<sup>1</sup> The Office indicated that it had not proceeded with its adjudication of the issue of whether appellant still had residuals from his accepted physical conditions in order to address her claim for a consequential psychological condition.

Dr. Kimpson stated that on examination appellant continued to show decreased range of motion of the lumbar spine secondary to pain with no focal deficits. He opined that her pain was consistent with her MRI scan and lumbar pressure discography, which revealed degenerative disc disease at the L5-S1 level and attendant pain. Dr. Kimpson stated that appellant continued to have significant disability secondary to her back pain and was not able to perform her previous occupation as a mail handler. He outlined restrictions of no heavy lifting greater than 20 pounds and no excessive bending, twisting or walking. Dr. Kimpson stated his disagreement with Dr. Sidhu's opinion that appellant was able to return to work; he noted that it was a known fact that patients with discogenic back pain, like appellant, demonstrated a relatively normal physical examination, in addition to normal electromyogram (EMG) and nerve conduction studies (NCS).

By decision dated December 22, 2008, an Office hearing representative affirmed the April 4, 2007 termination decision, finding that the Office met its burden to terminate compensation.

### **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>2</sup>

After it has determined that an employee has disability causally related to his or 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>3</sup>

Section 8123(a) provides 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>4</sup>

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

In order to resolve the conflict in the medical evidence between appellant's treating physician, Dr. Grant, and Dr. Pollak, the second opinion physician, the Office referred the case to a referee medical specialist, Dr. Sidhu, who stated in his February 16, 2007 report that appellant had no residuals from the February 2000 work injury based on her examination and diagnostic tests. Dr. Sidhu stated that there were no objective findings which showed residuals from her accepted lumbar strain, bilateral ankle strain and bilateral ankle tendinitis conditions; these were soft tissue symptoms which had long resolved. He advised that there was no objective basis to explain appellant's current symptoms and opined that she was able to perform the duties of a mail handler without restrictions. The Office relied on Dr. Sidhu's opinion in its April 7, 2007 decision, finding that appellant had no residuals or continuing disability stemming

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<sup>2</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>3</sup> *Id.*

<sup>4</sup> *Regina T. Pellecchia*, 53 ECAB 155 (2001).

from her February 2000 work injury and was therefore not entitled to compensation or medical benefits.

The Board finds that Dr. Sidhu's referee opinion negated a causal relationship between appellant's condition and disability and constituted medical evidence sufficient to establish that she no longer had any residuals from her accepted February 2000 injury. His opinion is sufficiently probative, rationalized and based upon a proper factual background. Therefore, the Office properly accorded Dr. Sidhu's opinion the special weight of an impartial medical examiner.<sup>5</sup>

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

Once the Office properly terminated appellant's compensation in its July 19, 2007 decision, the burden of proof shifted to her to establish continuing disability.<sup>6</sup>

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

Following the Office's April 7, 2007 termination decision, appellant requested reconsideration and submitted reports from Drs. Kissel and Kimpson. Dr. Kissel noted that the February 2000 employment injury aggravated and worsened her right foot pain and caused additional degenerative changes in the subtalar joint, which was now the main area of disability. He stated that appellant had also developed chronic tendinitis in the posterior tibial tendon. Dr. Kissel opined that this had resulted in long-term partial disability stemming from her inability to use the foot for standing, walking, lifting or carrying. In his October 1, 2007 report, Dr. Kimpson stated that his disagreement with Dr. Sidhu's opinion that appellant had no residuals from the February 2000 work injury and was able to return to work without restrictions. He noted that she had continued complaints of persistent, significant low back pain radiating down both lower extremities, which was consistent with her MRI scan and lumbar pressure discography showing degenerative disc disease at the L5-S1 level. Dr. Kimpson stated that on examination appellant continued to show decreased range of motion of the lumbar spine secondary to pain with no focal deficits. He stated that she still had work restrictions stemming from the February 2000 employment injury; in his opinion, patients who experience discogenic back pain typically reflected relatively normal physical examination, normal EMG and normal NCS.

The reports from Drs. Kissel and Kimpson did not constitute a probative medical opinion showing that appellant had any continuing disability or residuals from her accepted conditions. These physicians indicated generally that her back and foot conditions were causally related to the February 2000 employment injury, but failed to submit rationalized medical evidence to establish causal relation between appellant's current condition and her employment injury, sufficient to modify the Office's April 7, 2007 termination decision. Dr. Kissel and Dr. Kimpson merely restated one side of the conflict in medical evidence which was resolved by Dr. Sidhu's opinion; they did not provide well-reasoned and sufficiently supported opinions that would

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<sup>5</sup> Gary R. Seiber, 46 ECAB 215 (1994).

<sup>6</sup> Talmadge Miller, 47 ECAB 673, 679 (1996); see also George Servetas, 43 ECAB 424 (1992).

vitiating the Office's April 7, 2007 determination that appellant did not have any employment-related disability or residuals stemming from the February 2000 work injury. Their reports do not outweigh Dr. Sidhu's opinion nor do they negate the Office's finding that Dr. Sidhu's February 16, 2007 report represented the weight of the medical evidence. Thus, the Office hearing representative properly affirmed the April 7, 2007 termination decision.

**CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits in its April 7, 2007 decision. The Board finds that appellant has not met her burden to establish continuing disability.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 22, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2010  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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