



## **FACTUAL HISTORY**

The Office accepted that on April 16, 2008 appellant, then a 59-year-old tax examining technician, sustained a lumbar strain when she slipped and fell on a recently mopped floor. It paid wage-loss compensation for temporary total disability commencing on June 23, 2008.

By letter dated July 8, 2008, the Office granted appellant's request to change her attending physician to Dr. Ralph Taylor, a Board-certified internist. It requested that she submit a medical report from Dr. Taylor which provided a history of injury, a diagnosis of all conditions, objective findings, subjective complaints, test results, an opinion regarding the relationship between the diagnosed conditions and her employment, treatment recommendations and discussion of work restrictions.

A September 9, 2008 treatment note from Dr. Jonathan G. Brody, a general practitioner, advised that appellant was off work until September 12, 2008 due to bronchitis.

A September 23, 2008 magnetic resonance imaging (MRI) scan of appellant's lumbar spine by Dr. Douglas A. Linville, a Board-certified orthopedic surgeon, revealed facet spondylosis and back pain status post a fall. In a October 28, 2008 treatment note, Dr. Linville advised that appellant was off work until November 5, 2008. Appellant could return to work on that date with physical restrictions.

In a December 10, 2008 report, Dr. Moacir Schnapp, a neurologist, noted appellant's complaint of low back pain for the past several months. He obtained a history of the April 16, 2008 employment injury and medical treatment. On physical examination, Dr. Schnapp found that appellant was depressed due to her pain and she had a substantial component of histrionic behavior. He could barely touch her low back without her folding at the knees. Appellant had deep tendon reflexes that were symmetrical. At times there was a hint of a Hoffman's sign on the left, but it could not be confirmed. There were no long tract signs, atrophy, fasciculations, changes in temperature or signs of dystrophy. Examination of appellant's strength again revealed histrionic behavior with the use of her lower extremities. She could not extend her leg against the resistance of Dr. Schnapp's little finger or elevate her hip against any resistance at all. Appellant's cranial nerves were intact and coordination in the upper extremities was good. Dr. Schnapp reported normal findings on cardiovascular examination. He advised that appellant had unspecified myofascial pain. Dr. Schnapp discussed alternative treatment plans with appellant, but believed that he could not offer her anything. He stated that the lack of findings associated with her severe histrionic behavior indicated that treatment probably would not be successful.

On December 5, 2008 the Office referred appellant, together with a statement of accepted facts and medical record, to Dr. Bret Sokoloff, a Board-certified orthopedic surgeon, for a second opinion on the nature and extent of her employment-related residuals and disability. In a December 18, 2008 report, Dr. Sokoloff noted appellant's symptoms of low and middle back pain going up to her right shoulder. He reviewed a history of her April 16, 2008 employment injury, subsequent limited-duty work assignment and the medical records. On physical examination, Dr. Sokoloff reported normal findings regarding appellant's heart, lungs and abdomen. He stated that she jerked her extremities on motor testing which provided a very

inconsistent examination. Straight leg testing while seated or lying down was negative if appellant was distracted, but when she was lying down and aware of the testing, her right leg showed symptoms at 20 degrees and her left leg showed low back and hip symptoms at 30 degrees. Appellant strongly resisted straight leg testing unless she was distracted which resulted in no resistance or pain. On motor testing of the extensor hallucis longus on the right, she experienced pain radiating up her leg. Appellant had decreased sensation to light touch from her left mid-foot to her toes that was not in an anatomic distribution. While proprioception was intact on the right, she denied any proprioceptive ability on her left foot, ankle and toes. Dr. Sokoloff pressed on her shoulders which caused back pain and her to jerk away. Pressing on appellant's head caused pain in her entire spine. She had diffuse tenderness from approximately level six of the thoracic spine to the sacrum. Appellant also experienced tenderness laterally at the pelvis and abdominal regions. Light touch of a goniometer used to measure range of motion caused tingling and inconsistent severe pain in her back on the right side. Forward flexion was self-limited to 45 degrees. Extension was self-limited to five degrees. Lateral bend was variable between 20 and 30 degrees. Appellant had eight out of eight positive Wadel signs with superficial nonanatomic tenderness, pain on axial loading and simulated rotation, distracted straight leg raise and regional sensory change, weakness and overreaction.

Dr. Sokoloff advised that appellant had subjective back pain. Appellant showed multiple signs of symptom magnification with eight out of eight positive Wadel signs. Dr. Sokoloff stated that her mechanism of injury did not account for her complaints. Appellant's subjective complaints were inconsistent with any objective MRI scan and electromyogram (EMG) findings he reviewed. Her subjective complaints were inconsistent with known anatomic distributions or symptoms related to the accepted employment-related lumbar strain. Dr. Sokoloff stated that appellant appeared to have drug-seeking behavior based on the extensive narcotic medications she took throughout the course of medical treatment and her request for them on multiple occasions during his examination. He opined that the accepted employment injury temporarily aggravated her preexisting lumbar arthritis within the first six to eight weeks of her injury. The aggravation had resolved at the time of his examination and she had returned to her baseline status. Dr. Sokoloff advised that appellant was physically able to return to her tax examiner position. She did not have any residuals or permanent impairments and no further treatment or diagnostic evaluation was necessary.

The Office received a July 21, 2008 prescription from Dr. Taylor for physical therapy to treat appellant's low back sprain.

On January 9, 2009 the Office issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on Dr. Sokoloff's December 18, 2008 medical opinion. Appellant was afforded 30 days to respond to this notice.

A May 5, 2008 treatment note from Kamari Greene, a physical therapist, stated that appellant had lumbago. In a partial copy of a June 3, 2008 report, Dr. Taylor noted appellant's complaint of back pain and numbness in her left foot.

In letters dated January 15 and February 5, 2009, appellant disagreed with the Office's proposed action. She denied requesting narcotic medication from any attending physician or demonstrating drug seeking behavior. Appellant requested medication from Dr. Sokoloff

because his examination increased her pain. Her ongoing pain had worsened due to her refusal to take pain medication because it caused her acid reflux condition to flare up. Appellant denied having preexisting lumbar arthritis. She contended that both Dr. Taylor and Dr. Sokoloff made false accusations in their reports.

By decision dated February 17, 2009, the Office terminated appellant's wage-loss compensation and medical benefits effective that date. It found that Dr. Sokoloff's December 18, 2008 report constituted the weight of the medical opinion evidence.

By letter dated February 23, 2009, appellant, through her attorney, requested a telephonic oral hearing with an Office hearing representative. In a July 28, 2009 report, Dr. Martin D. Fritzhand, a Board-certified urologist, provided an impairment evaluation. He advised that appellant had 17 percent impairment of the right lower extremity and 6 percent impairment of the left lower extremity based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2008). Dr. Fritzhand noted that she had been unable to perform her routine work activities as a tax technician and household chores.<sup>1</sup>

By decision dated September 29, 2009, an Office hearing representative affirmed the February 17, 2009 termination decision. The medical evidence was found insufficient to establish that appellant had any continuing residuals or disability causally related to her accepted employment-related injury.

### **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 her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>2</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>3</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.<sup>4</sup>

### **ANALYSIS**

On appeal appellant contends that the Office's decision is contrary to fact and law. The Board finds, however, that the Office met its burden of proof to terminate appellant's wage-loss

---

<sup>1</sup> On August 28, 2009 an Office medical adviser reviewed Dr. Fritzhand's July 28, 2009 findings. He found that appellant had no permanent impairment each of the right and left lower extremity as Dr. Fritzhand's impairment ratings were inconsistent with the accepted employment-related condition and the findings of previous examiners.

<sup>2</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>3</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>4</sup> *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

and medical benefits as of February 17, 2009. It accepted that she sustained a lumbar strain while in the performance of duty on April 16, 2008. The Office subsequently referred appellant to Dr. Sokoloff for a second opinion evaluation.

Dr. Sokoloff's December 18, 2008 report reviewed a history of appellant's April 16, 2008 employment-related injury and medical treatment. He found that there were no clinical findings of any residuals or disability causally related to the accepted employment injury. Dr. Sokoloff advised that appellant had subjective back pain that was inconsistent with known anatomic distributions, the mechanism of the accepted employment injury and MRI scan and EMG findings. His physical examination revealed multiple signs of symptom magnification and inconsistent responses to testing. Dr. Sokoloff provided grave detail and examples to justify his conclusions in this regard. He also advised that appellant had drug-seeking behavior based on her use of narcotic medications throughout the course of her employment-related condition and her multiple requests for them during his examination. Dr. Sokoloff opined that the employment-related injury temporarily aggravated appellant's preexisting lumbar arthritis which ceased within six to eight weeks of the injury and she returned to her baseline symptoms. He further opined that she was physically able to return to her tax examiner position as she had no employment-related residuals or impairment. Dr. Sokoloff concluded that appellant did not require any further medical treatment or diagnostic testing.

The Board finds that Dr. Sokoloff's report represents the weight of the medical evidence and that the Office properly relied on his report in terminating appellant's compensation benefits on February 17, 2009. Dr. Sokoloff's opinion is based on proper factual and medical history as he reviewed a statement of accepted facts and appellant's prior medical treatment and test results. He also related his comprehensive examination findings in support of his opinion that the accepted work-related condition had resolved.

None of the medical evidence from Dr. Brody, Dr. Linville, Dr. Schnapp and Dr. Taylor provides any opinion addressing the causal relationship between the April 16, 2008 employment-related injury and appellant's current back condition and disability for work. Although Dr. Fritzhand stated that she had been unable to perform her work duties as a tax technician, he did not address whether her disability was causally related to the accepted employment-related injury. The Board finds that the reports of Dr. Brody, Dr. Linville, Dr. Schnapp, Dr. Taylor and Dr. Fritzhand are of limited probative value.<sup>5</sup>

The May 5, 2008 treatment from Ms. Greene, a physical therapist, is of no probative value in establishing appellant's claim. A physical therapist is not considered to be a "physician" as defined under the Federal Employees' Compensation Act.<sup>6</sup> The Board finds, therefore, that Ms. Greene's report does not constitute competent medical evidence to support appellant's claim. There is no other medical evidence contemporaneous with the termination of her benefits which supports that she has any continuing employment-related residuals or disability.

---

<sup>5</sup> *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>6</sup> *See* 5 U.S.C. § 8101(2); *A.C.*, 60 ECAB \_\_\_\_ (Docket No. 08-1453, issued November 18, 2008).

**CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation effective February 17, 2009 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related lumbar strain.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 29, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 2010  
Washington, DC

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

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

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