

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

K.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Houston, TX, Employer**

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**Docket No. 11-10
Issued: August 3, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On October 1, 2010 appellant filed a timely appeal from the July 12, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating compensation benefits. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly terminated appellant's compensation benefits effective December 22, 2007.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been on appeal before the Board.² In an April 12, 2010 decision, the Board found that OWCP did not meet its burden of proof to terminate compensation benefits effective December 22, 2007, due to a conflict in the medical evidence. Dr. Marvin Chang, an attending physician Board-certified in pain medicine, supported continuing residuals of the employment injury, while Dr. James Hood, a Board-certified orthopedic surgeon and second opinion physician, opined that appellant no longer had any residuals of her work injury. The facts and history contained in the prior appeal are incorporated by reference.

On April 28, 2010 OWCP referred appellant along with a statement of accepted facts, and the medical record to Dr. Frank Barnes, a Board-certified orthopedic surgeon for an impartial medical evaluation to resolve the conflict in opinion between Drs. Chang and Hood as to whether she had residuals from her work injury.

In an April 30, 2010 report, Dr. Chang noted that appellant was seen for follow up of chronic pain syndrome secondary to cervical spondylosis with cervical intervertebral disc derangement. He noted that appellant was trying to get her claim reopened and was only taking Advil for pain. Dr. Chang recommended prescription medication.

In a May 24, 2010 report, Dr. Barnes reviewed appellant's history of injury and medical treatment. He examined appellant and noted findings which included that the cervical and lumbar spine curvature reversal was normal. Dr. Barnes noted that the right shoulder was normal and had the same range of motion as her left shoulder. Muscle testing and sensory testing of the arms was normal. Testing of the lumbar spine revealed no evidence of radiculopathy. Dr. Barnes diagnosed cervical degenerative disc disease, lumbar strain syndrome and right shoulder strain. He determined that appellant had no detectable residuals regarding her right shoulder and cervical spine. At the lumbar spine, there was a discrepancy in size for the right and left calf; however, it was unlikely to be the residual of a sprain. Dr. Barnes found that there were no residuals from the October 5, 2006 employment injury. He advised that a magnetic resonance imaging (MRI) scan showed degenerative changes not due to acute trauma. Dr. Barnes recommended a work hardening program to return her to her usual work. He noted that the only abnormal physical finding was asymmetry of her calves and two Waddell's signs, which did not correlate with her MRI scan findings. Dr. Barnes opined that appellant sustained a soft tissue injury which usually will heal in its own course whether or not it is treated. In an accompanying work capacity evaluation form, he opined that appellant could perform her usual job. Dr. Barnes listed no work restrictions.

In a letter dated June 21, 2010, OWCP requested that Dr. Barnes clarify his opinion with respect to whether appellant was disabled after December 22, 2007. In a July 5, 2010 addendum, Dr. Barnes opined that his examination and his review of appellant's medical records did not reveal any objective evidence to support that she was disabled after December 22, 2007.

² Docket No. 09-1127 (issued April 12, 2010).

By decision dated July 12, 2010, OWCP, terminated appellant's compensation benefits effective December 22, 2007, on the grounds that appellant had no continuing residuals of her employment injury.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is 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.⁵ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁶

Furthermore, FECA provides that, if there is disagreement between the physician making the examination for OWCP and the employee's physician, OWCP shall appoint a third physician who shall make an examination.⁷ In cases where OWCP has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸

ANALYSIS

Following the Board's prior decision, OWCP properly referred appellant to an impartial medical examiner, Dr. Barnes, to resolve the medical conflict between Drs. Chang and Hood.

The Board finds that Dr. Barnes' May 24 and July 5, 2010 reports are sufficiently well rationalized and based upon a proper factual background such that they are entitled to special weight in establishing that residuals of appellant's employment injury had ceased and that any disability ended by December 22, 2007. Dr. Barnes reviewed appellant's medical history, reported his examination findings and determined that there were no objective findings to correspond with appellant's subjective complaints. He found no objective evidence of any work related disability or residuals. Dr. Barnes advised that MRI scan findings were degenerative in nature and not due to acute trauma. He examined appellant and noted findings which included that the cervical and lumbar spine curvature reversal was normal. Dr. Barnes also found the right shoulder was normal and had the same range of motion as her left shoulder. He explained that

³ *Curtis Hall*, 45 ECAB 316 (1994).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁶ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁷ 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁸ *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

regarding the lumbar spine, there was a discrepancy in size for the right and left calf; however, it was unlikely to be the residual of a sprain. Dr. Barnes opined that there were no residuals from the October 5, 2006 employment injury. He advised a work hardening program to return appellant to her usual work.

On June 21, 2010 OWCP requested that Dr. Barnes clarify whether appellant was disabled on or after December 22, 2007.⁹ In a July 5, 2010 addendum, Dr. Barnes opined that his examination and review of the medical record did not reveal any objective evidence to support that appellant was disabled after December 22, 2007.

In these circumstances, OWCP properly accorded special weight to the impartial medical examiner's findings. When an impartial medical specialist is asked to resolve a conflict in medical evidence, his opinion, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹⁰ The Board finds that Dr. Barnes' reports represent the weight of the medical evidence and establish that there are no continuing residuals or disability of the October 5, 2006 work injury.

The Board also notes that Dr. Chang submitted an April 30, 2010 report. However, Dr. Chang's diagnosed conditions were not accepted by OWCP and did not specifically address the cause of appellant's conditions. Furthermore, as he had been on one side of the conflict in the medical opinion that the impartial specialist resolved, his subsequent opinion will generally be insufficient to overcome the special weight accorded the impartial specialist or to create a new medical conflict.¹¹ There is no other medical evidence contemporaneous with Dr. Barnes' reports supporting any continuing residuals of the accepted lumbar, cervical and right shoulder sprains.

On appeal, appellant contends that, despite the Board's previous reversal of OWCP's decision, she was denied compensation benefits. She also asserts that her condition remains work related and her work injury may have aggravated a prior injury in a separate claim.¹² After the Board's prior decision, OWCP referred appellant to Dr. Barnes to resolve the medical conflict. As noted, Dr. Barnes' opinion established that there were no ongoing residuals of the work injury and no work-related disability after December 22, 2007. Consequently, there is no entitlement to wage-loss compensation after December 22, 2007. Appellant also stated that Dr. Barnes was not the doctor who examined her in 2007. As explained, the conflict was created between Drs. Chang and Hood regarding whether appellant continued to have residuals from her work injury, thus referral to an impartial new physician, Dr. Barnes, was required under 5 U.S.C.

⁹ The Board has held that, when OWCP obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, OWCP must secure a supplemental report from the specialist to correct the defect in his original report. *Talmadge Miller*, 47 ECAB 673 (1996); *Harold Travis*, 30 ECAB 1071, 1078 (1979); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810(11)(c)(1)-(2) (April 1993).

¹⁰ See *supra* notes 7 and 8.

¹¹ *Barbara J. Warren*, 51 ECAB 413 (2000); *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹² Should appellant feel that her current conditions pertain to a separate claim, she should contact OWCP regarding the other claim.

§ 8123(a). Appellant stated that Dr. Barnes suggested work hardening before he clarified his opinion. The Board notes that Dr. Barnes did not state that this was necessitated by the work injury and the physician clearly did not support ongoing work-related residuals. Appellant referred to Dr. Albina, a previous referral physician in the claim, and Dr. Hood. She contended charges were brought against them for unprofessional conduct and inappropriate behavior. The Board notes that the record does not contain any documentation regarding these assertions. There is no evidence of record that either physician was unqualified to render an opinion at the time appellant was examined. Furthermore, Dr. Albina's opinion is not part of the medical conflict that gave rise to appellant's referral to Dr. Barnes. The Board also notes that subsequent to the Office's July 12, 2010 decision, additional evidence was received. The Board has no jurisdiction to review this evidence for the first time on appeal.¹³

CONCLUSION

The Board finds that OWCP met its burden of proof in terminating appellant's compensation benefits effective December 22, 2007.

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 3, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹³ 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).