

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

K.M., Appellant	)	
	)	
and	)	<b>Docket No. 10-1099</b>
	)	<b>Issued: January 7, 2011</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Capital Heights, MD, Employer	)	
	)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 15, 2010 appellant, through counsel, filed a timely appeal of a January 15, 2010 decision of the Office of Workers' Compensation Programs terminating her wage-loss and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

**ISSUES**

The issues are: (1) whether the Office properly terminated appellant's compensation for benefits effective May 11, 2008 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injury; and (2) whether appellant had any continuing employment-related residuals or disability after May 11, 2008.

**FACTUAL HISTORY**

On June 25, 2003 appellant, then a 39-year-old part-time flexible clerk, filed a traumatic injury claim alleging that on June 24, 2003 she injured her low back in the performance of duty. The Office accepted the claim for low back sprain and displacement of a lumbar intervertebral

disc without myelopathy. Appellant stopped work on October 23, 2003 and was placed on the periodic rolls in receipt of temporary total disability.<sup>1</sup>

Appellant was treated by Dr. Francisco Ward, a Board-certified physiatrist. In a February 26, 2007 report, Dr. Ward provided findings on examination and diagnosed degenerative disc disease at L5-S1 with mechanical lower back pain. He advised that appellant had residuals from the accepted injury and that she was totally disabled from work.

In a March 5, 2007 second opinion report, Dr. Mark S. Rosenthal, a Board-certified orthopedic surgeon, diagnosed preexisting lumbar degenerative disease with an acute strain on June 24, 2003. He stated that the diagnosis of herniated disc was not proven by the medical records available. Dr. Rosenthal found that appellant had no residuals due to the June 23, 2003 injury and was fully capable of performing her date-of-injury job duties.

The Office found a conflict in medical opinion between Dr. Rosenthal and Dr. Ward. On January 19, 2007 it referred appellant, together with a statement of accepted facts, a list of questions and the medical record, to Dr. Douglas Wright, a Board-certified orthopedic surgeon, to resolve whether she had any disability or residuals from her employment-related injury.

In a June 26, 2007 report, Dr. Wright reviewed the medical evidence and the statement of accepted facts. On physical examination, he concluded that appellant had no objective findings that were causally related to her accepted June 24, 2003 injury. Rather, appellant's physical limitations were external. On examination, there was histrionic pain to palpation of the lumbar spine. The lower extremities had symmetrically depressed reflexes of the patella and Achilles tendon. There was full range of motion of ankles, knees and hips. Appellant complained of referred pain to the right buttocks and upper lumbar musculature. A magnetic resonance imaging (MRI) scan of the lumbar spine revealed degenerative changes diffusely and nonspecifically, with a small disc bulge at L5-S1. Dr. Wright diagnosed lumbar strain and herniated disc. He advised that appellant had no physical, radiographic or diagnostic signs that corresponded with her history and/or physical findings. Dr. Wright's impression was that she had a conversion reaction and ulterior motives in gains from her symptomatic complaints.

On October 8, 2007 the Office asked Dr. Wright to address whether appellant had residuals of her June 24, 2003 injury. In an October 9, 2007 work capacity evaluation, Dr. Wright found that she could return to her date-of-injury job without restrictions. He advised that appellant had no residuals.

In a December 20, 2007 report, Dr. Wright diagnosed somatic complaints of lumbar discomfort, which had no relationship to her accepted work injury. He noted that appellant was confrontational with histrionic posturing and positioning during examination. Appellant reported that she was in the military for a short while and was medically discharged for complaints of low back and knee pain. There was evidence of arthritis at L5-S1 on a June 30, 2003 MRI scan that did not support a definitive injury. On examination, appellant was histrionic to palpation, touch, manipulation and motion. The lower extremities had bilateral pulses and were well perfused. There was no asymmetry in regards to length, range of motion, color, turgor, rubor, temperature

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<sup>1</sup> The Office accepted appellant's December 30, 1999 traumatic injury claim (File No. xxxxxx728) for back sprain with no loss of work. The case was closed on March 14, 2000.

or overall examination. Although the diagnosis of lumbar strain was documented in appellant's record, Dr. Wright stated that he had no reason to believe that she ever suffered a lumbar strain, either by her history or examination. He advised that further medical treatment was not necessary.

On February 4, 2008 the Office asked Dr. Wright to clarify whether appellant had residuals of her accepted back conditions. In a letter dated March 3, 2008, he again stated that she did not have any residuals from the 1999 or 2003 back injuries. Dr. Wright stated that appellant's history, physical examination and diagnostic studies did not support any objective musculoskeletal injury.

On March 21, 2008 the Office proposed to terminate appellant's monetary and medical benefits based on Dr. Wright's reports. It found she no longer had any disability or residuals related to the accepted 2003 injury. Appellant was afforded 30 days to submit any additional evidence.

By decision dated April 23, 2008, the Office terminated appellant's compensation benefits effective May 11, 2008. It found that the weight of the evidence rested with the opinion of Dr. Wright, the impartial medical examiner.

On May 8, 2008 appellant, through her representative, requested an oral hearing held on October 17, 2008. Counsel contended that Dr. Wright ignored the statement of accepted facts when he asserted that appellant did not suffer a work-related injury.

In a July 29, 2008 report, Dr. Carey-Walter Closson, a Board-certified anesthesiologist, noted that appellant had experienced low back pain ever since sustaining a work-related injury five years earlier. On examination there was normal motor strength in both lower extremities. Deep tendon reflexes were symmetrical and intact. Motor strength was 4/5 in the bilateral lower extremities. Straight leg raising test was negative for radicular pain bilaterally. There was significant myofascial tenderness of the lumbar spine as well as significant pain with lumbar extension and rotation. A note from Maryland Orthopedics reported that x-rays of the lumbar spine showed narrowing of the L5-S1 disc space with a possible disc herniation. Dr. Closson diagnosed lumbar degenerative disc disease at L5-S1; lumbar radiculopathy; lumbar facet arthropathy and S1 joint arthropathy; lumbar myofascial pain; chronic, intractable low back pain; and medical comorbidities including depression, anxiety and previous suicidal ideation.

In a September 18, 2008 report, Dr. Allan H. Macht, a Board-certified surgeon, obtained a history of injury reflecting that appellant felt a pop in her back in June 2003 while opening a safe and carrying cash. Appellant was previously injured in 1999 while in the Marine Corps. On examination, there was tenderness upon palpation about the lower back region. Flexion of the lower back was limited to 14 degrees, extension to 3 degrees and lateral bending to 10 degrees bilaterally. There was pain with motion of the lower back region. Sensation of the lower extremities was intact. Straight leg raising test was positive immediately bilaterally with pain radiating into the left leg. There were no back spasms noted. Appellant had generalized weakness of both legs and slight pain with resistance against active motion of her hips. Dr. Macht diagnosed sprain of back with displacement of discs without myelopathy. A June 2003 MRI scan showed evidence of severe degenerative disc disease at L5-S1 with a Type 3 modic change and collapse of the interspace. Dr. Macht rated eight percent impairment of the

whole body under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He stated that there were insufficient tests performed in order to determine appellant's existing pathology and that her symptomatology might outweigh any actual pathology present. Dr. Macht recommended that a psychiatrist determine whether she has somatoform disorder or conversion disorder. He found that appellant was totally disabled based on her current condition, whether it was completely "physical based" or "partly physical and partly psychiatric based."

In an October 27, 2008 report, Dr. Macht opined that 30 percent of appellant's current impairment was due to the December 1999 accident and 70 percent was due to the June 2003 accident. He reiterated that she was totally disabled from work.

By decision dated January 2, 2009, the Office hearing representative affirmed the April 23, 2008 decision terminating appellant's benefits, based upon Dr. Wright's medical opinion, which constituted the weight of the medical evidence.

On December 23, 2009 appellant requested reconsideration. She submitted a January 28, 2009 report from Dr. Macht, who stated that it would be difficult to describe her back pathology since she had not undergone any diagnostic testing during the previous five years. Dr. Macht recommended additional studies.

By decision dated January 15, 2010, the Office denied modification of the January 2, 2009 decision, finding that the medical evidence submitted was insufficient to overcome the weight of Dr. Wright's opinion.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.<sup>2</sup> 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>3</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>4</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>5</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>6</sup>

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<sup>2</sup> A.W., 59 ECAB 593 (2008).

<sup>3</sup> J.M., 58 ECAB 478 (2007).

<sup>4</sup> See *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>5</sup> T.P., 58 ECAB 524 (2007).

<sup>6</sup> I.J., 59 ECAB 408 (2008); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>7</sup>

### ANALYSIS -- ISSUE 1

The Board finds that a conflict in medical opinion arose between Dr. Ward, appellant's treating physician, and Dr. Rosenthal, an Office referral physician, as to whether appellant had any continuing residuals or disability causally related to her accepted June 24, 2003 employment-related injury. Dr. Ward opined that she had residuals from the accepted low back sprain and displaced lumbar disc and that she was totally disabled from work. Dr. Rosenthal found that appellant had no residuals due to the June 24, 2003 injury and that she was fully capable of performing her date-of-injury job duties. In order to resolve the conflict, the Office properly referred appellant to Dr. Wright.

Dr. Wright reviewed appellant's medical history, history of injury and statement of accepted facts. In a June 26, 2007 report, he diagnosed lumbar strain/herniated disc based on the statement of accepted facts. Following physical examination, Dr. Wright concluded that appellant had no objective findings that were causally related to her accepted June 24, 2003 injury. Rather, appellant's physical limitations were external. While there was histrionic pain to palpation of the lumbar spine, there was full range of motion of ankles, knees and hips. An MRI scan of the lumbar spine revealed degenerative changes diffusely and nonspecifically, as well as a small disc bulging at L5-S1. Dr. Wright found that appellant had no physical or diagnostic signs that corresponded with her history and physical findings. He advised that she had a conversion reaction or ulterior motives in gains from her symptomatic complaints. On October 9, 2007 Dr. Wright found that appellant could return to her date-of-injury job without restrictions and reiterated that appellant had no ongoing residuals. Following reexamination on December 20, 2007 examination and review of an updated statement of accepted facts, he diagnosed somatic complaint lumbar discomfort, which had no relationship to her accepted work injury. Dr. Wright noted that appellant was confrontational with histrionic posturing and positioning during his examination. On examination, appellant's lower extremities had bilateral pulses and were well perfused. There was no asymmetry as to length, range of motion, color, turgor, rubor, temperature or overall examination. Although the diagnosis of lumbar strain was documented in appellant's record, Dr. Wright stated that he had no reason to believe that she ever sustained a lumbar strain, either by her history or examination. He advised that further medical treatment was not warranted. On March 3, 2008 Dr. Wright again stated that appellant did not have any residuals from the alleged 1999 or 2003 back injuries. He stated that her history, physical examination and diagnostic studies did not support any objective musculoskeletal injury.

The Board finds that Dr. Wright's opinion is based on a proper factual and medical background and is entitled to special weight. Dr. Wright reviewed the medical record, statement of accepted facts, provided findings upon physical examination and found that appellant did not have any residuals or disability causally related to her employment-related injury. His report constitutes the special weight of medical evidence afforded an impartial medical specialist. The

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<sup>7</sup> Gloria J. Godfrey, 52 ECAB 486 (2001).

Board, therefore, finds that the Office met its burden of proof to terminate appellant's compensation benefits on May 11, 2008.

Appellant's representative contended that Dr. Wright's evaluation should not constitute the weight of the medical evidence, as he ignored the statement of accepted facts. The evidence reflects, however, that Dr. Wright addressed the statement of accepted facts and diagnosed a history of lumbar strain/herniated disc based on the facts presented. In response to the Office's inquiry, Dr. Wright opined that appellant did not have ongoing residuals from either the 1999 or 2003 back injuries and that further medical treatment was not warranted. His opinion was based on a complete review of the record and a thorough examination of appellant.

The Board also finds that the medical evidence submitted by appellant is insufficient to overcome the weight of the impartial medical examiner. On July 29, 2008 Dr. Closson provided examination findings and diagnosed lumbar degenerative disc disease, L5-S1; lumbar radiculopathy; lumbar facet arthropathy and S1 joint arthropathy; lumbar myofascial pain; chronic, intractable low back pain; and medical comorbidities including depression, anxiety and previous suicidal ideation. Her report, however, does not contain an opinion as to the cause of the diagnosed conditions. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.<sup>8</sup> Similarly, Dr. Macht's October 27, 2008 report does not contain an opinion on causal relationship. Therefore, it is of diminished probative value.

On September 18, 2008 Dr. Macht provided examination findings and diagnosed sprain of back with displacement of discs without myelopathy. He opined that appellant had a two percent impairment of the whole person due to her accident at work in December 1999 and a six percent impairment of the whole person due to the accident of June 2003. Dr. Macht stated that he did not have sufficient information to determine her existing pathology. Noting that appellant's "symptomatology may outweigh any actual pathology," he opined that she was totally disabled from work based on her current condition, although he was unable to determine whether the condition was completely "physical based" or "partly physical and partly psychiatric based." Dr. Macht concluded that "these conditions which need to be outlined by a psychiatrist in addition to the physical ones that need to be maybe outlined by further testing are causally related to her June 2003 accident." His opinion is speculative and vague. Moreover, Dr. Macht did not explain how appellant's current condition is causally related to the accepted injury. The Board has held that a medical opinion that is not fortified by rationale is of diminished probative value.<sup>9</sup> Therefore, this report is insufficient to overcome the weight of the opinion if the referee physician.

In a January 28, 2009 report, Dr. Macht recommended further testing before assuming that the appellant's ongoing symptoms were not due solely to the accepted work-related injury. He did not express a definitive opinion as to the cause of appellant's condition. Rather, Dr. Macht stated that he was unable to describe her back pathology without further testing. The Board finds this report to be of limited probative value.

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<sup>8</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>9</sup> *Cecilia M. Corley*, 56 ECAB 662 (2005).

The Board notes that the medical reports submitted after the date of termination of benefits do not address appellant's condition on or prior to that date. Therefore, they are not relevant to the issue that was decided by the Office, namely whether appellant was disabled due to or had residuals from, the accepted June 24, 2003 injury as of May 11, 2008.

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

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to her accepted injury.<sup>10</sup> To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>11</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>12</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the claimant.<sup>13</sup>

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

After the Office properly terminated appellant's compensation as of May 11, 2008, the burden of proof shifted to her to establish continuing employment-related disability.<sup>14</sup> As noted, appellant submitted a July 29, 2008 report from Dr. Closson and an October 27, 2008 report from Dr. Macht. As neither report contains an opinion on causal relationship, they are of limited probative value and are insufficient to meet her burden of proof.<sup>15</sup>

Dr. Macht's September 18, 2008 report is vague and speculative and does not provide a definitive diagnosis nor does it explain how the June 24, 2003 back injury was competent to cause appellant's current back or psychological condition.<sup>16</sup> Therefore, not only is Dr. Macht's report insufficient to overcome Dr. Wright's opinion regarding appellant's condition prior to May 11, 2008, it is also insufficient to establish that she has continuing residuals causally related to the June 24, 2003 injury.

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<sup>10</sup> See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>11</sup> *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>12</sup> *G.T.*, 59 ECAB 447 (2008); *Elizabeth Stanislav*, 49 ECAB 540 (1998).

<sup>13</sup> *K.W.*, 59 ECAB 271 (2007); *Solomon Polen*, 51 ECAB 341 (2000).

<sup>14</sup> *I.J.*, *supra* note 6; *Joseph A. Brown, Jr.*, *supra* note 10.

<sup>15</sup> *Michael E. Smith*, *supra* note 8

<sup>16</sup> *Cecilia M. Corley*, *supra* note 9.

In a January 28, 2009 report, Dr. Macht recommended further testing before assuming that appellant's ongoing symptoms were not due solely to the accepted work-related injury. He did not express a definitive opinion as to the cause of her condition. Rather, Dr. Macht stated that he was unable to describe appellant's back pathology without further testing. The Board finds this report to be of limited probative value.

The Board finds that the medical evidence of record is insufficient to establish that appellant suffered continuing residuals or disability after May 11, 2008 due to her accepted June 24, 2003 back injury.

### **CONCLUSION**

The Board finds that the Office properly terminated appellant's wage-loss and medical benefits, effective May 11, 2008, on the grounds that she had no residuals or disability related to her accepted employment injury. The Board also finds that appellant has failed to establish that she had any employment-related residuals or disability after May 11, 2008 due to her accepted June 24, 2003 back injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 15, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 7, 2011  
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