

FACTUAL HISTORY

On October 26, 1984 appellant, then a 38-year-old clerk, filed a claim for a traumatic injury occurring on that date in the performance of duty. The Office accepted the claim, assigned file number A6-361618, for right shoulder strain and a right wrist fracture. Appellant returned to limited-duty employment. The Office further accepted that on July 22, 1987 appellant sustained a right shoulder strain, a right wrist strain and right shoulder impingement syndrome.² The Office combined the October 26, 1984 and July 22, 1987 injuries into file number A6-420115. Subsequently, the Office accepted that appellant sustained a herniated cervical disc at C6-7. She returned to work part time on July 8, 1995. Appellant stopped work on July 28, 1995 and filed an occupational disease claim, which the Office assigned file number A6-632565 and accepted for an aggravation of chronic right shoulder strain. In a decision dated March 18, 1998, the Board affirmed the Office's February 27, 1996 termination of appellant's compensation effective March 3, 1996 for file number A6-632565 on the grounds that she had no further disability due to her July 28, 1995 employment injury.³ Appellant continued to receive compensation for disability for her injuries under file number A6-420115 for the 1984 and 1987 injuries.

In a report dated August 27, 2002, Dr. Jayam Iyer, a Board-certified anesthesiologist, diagnosed "[m]igraines, a herniated disc at C6-7, status post right wrist fracture, right shoulder sprain, calcification tendinitis of the right shoulder, impingement syndrome [of the] right shoulder, status post acromioplasty of the right shoulder done on November 18, 1988 with minimal help only." He also diagnosed cervical spondylosis, degenerative disc disease of the cervical spine and myofascial pain syndrome. Dr. Iyer found that appellant was unable to work due to headaches and pain in her neck and recommended possible vocational rehabilitation. In a work restriction evaluation of the same date, Dr. Iyer opined that she might be able to work four hours a day with restrictions.

In an investigative memorandum dated September 6, 2002, an inspector with the employing establishment related that, from December 5 to 7, 2001, appellant was observed either loading, unloading or delivering telephone books from her vehicle. When questioned, appellant maintained that she was helping "her daughter and a friend deliver telephone books." The inspector submitted a compact disc (CD) with photographs for the record.

On September 20, 2002 the Office requested that Dr. Iyer review the surveillance photographs, provide treatment notes from December 2001 to May 2002 and discuss appellant's current work restrictions.

By letter dated October 21, 2002, the Office referred appellant to Dr. Walter I. Choung, an orthopedic surgeon, for a second opinion evaluation. In a report dated November 5, 2002, Dr. Choung diagnosed a history of cervical sprain, degenerative joint disease of the cervical spine, a history of a subacromial decompression of the right shoulder and a history of a right wrist fracture due to the October 26, 1984 and July 22, 1987 employment injuries. He further

² The Office assigned the claim file number A6-420115.

³ *Kathryn E. DeMarsh*, Docket No. 96-1634 (issued March 18, 1998).

diagnosed nonemployment-related multidirectional right shoulder instability. Dr. Choung found that appellant had a normal examination of the cervical spine, right shoulder and right wrist and that her “subjective complaint[s] outweighed the objective findings.” He concluded that appellant had no limitations of the right upper extremity or cervical spine and could perform her usual employment without restrictions.⁴

In a report dated April 6, 2003, Dr. Iyer indicated that he had reviewed Dr. Choung’s opinion and opined that appellant was not capable of employment due to “chronic pain syndrome secondary to multiple damages in the form of degenerative dis[c] disease, foraminal narrowing, [and] an osteoarthritis bone spur of the cervical spine.”

The Office determined that a conflict in medical opinion existed between Dr. Iyer and Dr. Choung and referred appellant to Dr. Joseph M. Sena, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated April 15, 2003, Dr. Sena described the history of injury and reviewed the statement of accepted facts and diagnostic studies. He noted that a magnetic resonance imaging (MRI) scan study obtained on January 24, 1990 and a March 7, 1990 myelogram showed a herniated C6-7 disc. The most recent MRI scan from Access Imaging showed degenerative changes and cervical spondylosis but no disc herniation. On examination, Dr. Sena found that appellant had tenderness but no “palpable fracture, dislocation, swelling or erythema of the right wrist.” He further found that she retained good motion. Dr. Sena determined that appellant’s range of motion of the cervical spine was good with “some pain on extremes of rotation.” He listed essentially normal findings on examination of appellant’s shoulder with some “discomfort on extremes of passive external rotation” and tenderness of the biceps tendon. Dr. Sena stated:

“[Appellant’s] diagnosis with regard to injuries sustained as a result of her [employment-]related accident include strain of the right wrist with unresolved discomfort of the right wrist requiring no further treatment at this time. In addition, she is status post unresolved cervical strain/sprain with some residual complaints of neck pain and possible herniated dis[c] at the C6-7 level. She does not appear to be a good surgical candidate for her neck injury and no further treatment is recommended for this. [She is] status post strain of the right shoulder with residual rotator cuff tendinitis/bursitis of the right shoulder. Surgical intervention is not recommended at this time.”

Dr. Sena further related that he could not say definitely whether appellant had a herniated disc due to the conflicting findings on MRI scan studies and that he could provide a further opinion if he had the scans to review. He noted that he requested the scans from the most recent MRI scan to review. Dr. Sena diagnosed a “cervical strain/sprain with or without herniated disc.” He reviewed the CD provided by the employing establishment’s inspector and described her activities on the disc. Dr. Sena stated, “Realistically, it would be hard to argue that [appellant] could not return to her regular work duties as a postal clerk.” Dr. Sena found that she

⁴ Dr. Iyer submitted office visit notes dated September to December 2002 in which he described appellant’s current complaints and findings on examination.

had no need for further treatment of the wrist and shoulder strain or surgery on the cervical spine. He stated, "Although [appellant] may have some mild, residual discomfort, full-time regular work duties are not contraindicated, and I would not provide any significant work restrictions." Dr. Sena concluded that appellant could work full time without restrictions. In an accompanying work restriction evaluation, he noted that appellant could work full time without restrictions.

By letter dated April 25, 2003, the Office inquired whether Dr. Sena had obtained the MRI scan from Access Imaging and, if not, authorized him to obtain a new cervical MRI scan. The Office further requested clarification regarding whether appellant had any objective residuals of her right wrist and shoulder injuries and whether her cervical complaints would prevent her from performing repetitive work duties.⁵

On May 17, 2003 Dr. Sena requested that appellant obtain her MRI scans for review. In a response to the Office of the same date, Dr. Sena indicated that he had requested the actual MRI scans for review and opined that she had no objective findings of right wrist pain and had minor objective findings of shoulder complaints. He stated:

"Based on the history, physical exam[ination], review of records and the CD, it would be reasonable to state that [appellant] is *not* contraindicated from performing repetitive mail unbundling [and] traying of mail, repetitive hand motion [and] repetitive lifting. Of course, [she] may have increased subjective complaints with these activities." (Emphasis in the original.)

In a letter to the employing establishment dated June 12, 2003, Dr. Iyer indicated that appellant had chronic pain secondary to osteoarthritis bone spurring and opined that she could work four hours per day. Appellant returned to part-time work on June 11, 2003.⁶

On July 17, 2003 the Office notified appellant that it proposed to terminate her compensation on the grounds that she had no further disability and proposed to terminate her authorization for medical treatment for her right wrist and right shoulder conditions.

Appellant submitted a progress report dated July 16, 2003 from Dr. Iyer, who described appellant's increased complaints after working for a day. In a progress report dated July 30, 2003, Dr. Iyer listed findings of increased pain, headaches, anxiety and depression. She recommended psychiatric treatment.

By decision dated August 28, 2003, the Office terminated appellant's compensation on the grounds that she had no further employment-related disability. It also terminated her medical treatment as she had no further residuals of her right wrist and shoulder condition. The Office continued to authorize medical treatment for her cervical spine.

The record contains progress reports from Dr. Iyer dated September to October 2003.

⁵ The record contains progress notes from Dr. Iyer dated April 11, 23 and May 15, 2003 describing findings on examination and his treatment plan.

⁶ In a progress report dated June 17, 2003, Dr. Iyer opined that appellant could perform part-time sedentary employment.

By letter postmarked September 30, 2003, appellant requested an oral hearing. In a decision dated November 20, 2003, the Office denied appellant's request for a hearing as untimely.

Appellant submitted a form report from Dr. Iyer dated September 10, 2003, and progress reports from Dr. Iyer dated November 17, 2003 to July 7, 2004. Dr. Iyer indicated that she had reviewed the reports of Drs. Sena and Choung and "thoroughly reviewed the surveillance" obtained on appellant. She noted that due to the size of the telephone books appellant was lifting only seven and a half pounds at a time. Dr. Iyer indicated that she treated appellant for migraines, cervical spine pain, right wrist arthritis and right shoulder bursitis which were employment related. Dr. Iyer opined that appellant could work four hours per day with restrictions.

On July 29, 2004 appellant, through her attorney, requested reconsideration. Counsel contended that the Office erred in failing to refer appellant for vocational rehabilitation and that Dr. Iyer's reports supported that she had continuing employment-related disability. Counsel further noted that Dr. Iyer attributed appellant's depression and anxiety to her employment injury and requested the "acceptance of a consequential stress claim." He further argued that the statement that appellant was videotaped lifting telephone books was "misleading, as it is not specifically mentioned what type of telephone books [she] was lifting. She was lifting miniature telephone books that weighed approximately [one-half] pound." Counsel also asserted that the Office erred in failing to send Dr. Sena the MRI scans for review and in failing to inform him of her usual work duties. He contended that Dr. Sena focused on the surveillance photographs without adequately explaining his conclusions in view of the objective and subjective findings and noted that neither Dr. Choung nor Dr. Sena "addressed the chronic pain syndrome, secondary to osteoarthritis bone spurs that have been irritated by the work-related condition."

By decision dated August 31, 2004, the Office denied modification of its August 8, 2003 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁷ 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.⁸ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which would require further medical treatment.⁹

⁷ *Paul L. Stewart*, 54 ECAB ____ (Docket No. 03-1107, issued September 23, 2003).

⁸ *Elsie L. Price*, 54 ECAB ____ (Docket No. 02-755, issued July 23, 2003).

⁹ *James F. Weikel*, 54 ECAB ____ (Docket No. 01-1661, issued June 30, 2003).

Section 8123(a) of the Federal Employees' Compensation Act¹⁰ provides, "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."¹¹ 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.¹²

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained right shoulder strain, right shoulder impingement syndrome, a right wrist fracture, right wrist strain and a herniated cervical disc at C6-7 due to October 26, 1984 and July 22, 1987 employment injuries. Appellant worked in a limited-duty capacity until she stopped work on July 8, 1995. The Office determined that a conflict in medical opinion existed between Dr. Iyer, appellant's physician, and Dr. Choung, an Office referral physician, regarding the extent of her employment-related disability and residual conditions. The Office referred appellant to Dr. Sena for an impartial medical examination to resolve the conflict in opinion.

Where there exists a conflict in medical opinion 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 upon a proper factual background, is entitled to special weight.¹³ The Board finds that the opinion of Dr. Sena, a Board-certified orthopedic surgeon selected to resolve the conflict in opinion, is well rationalized and based on a proper factual and medical history; thus, it is entitled to special weight. In a report dated April 15, 2003, Dr. Sena accurately summarized the relevant medical evidence, provided detailed findings on examination and reached conclusions about appellant's condition which comported with his findings.¹⁴ He found that appellant had tenderness but no "palpable fracture, dislocation, swelling or erythema of the right wrist" with good motion. Dr. Sena further found that appellant's range of motion of the cervical spine was good with "some pain on extremes of rotation." He listed essentially normal findings on examination of appellant's shoulder with some "discomfort on extremes of passive external rotation" and tenderness of the biceps tendon. Dr. Sena concluded that appellant required no further medical treatment for her wrist or shoulder conditions and that she could return to her regular employment without restrictions. In a supplemental report dated May 17, 2003, Dr. Sena opined that appellant had no further objective findings regarding the wrist and minimal objective findings regarding the shoulder. He found that she could perform repetitive duties in the course of her employment. Dr. Sena provided rationale for his opinion by explaining that he based his opinion on findings on physical examination, appellant's medical

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ 5 U.S.C. § 8123(a).

¹² *Barbara J. Warren*, 51 ECAB 413 (2000).

¹³ *See Willie M. Miller*, 53 ECAB 697 (2002).

¹⁴ *Manuel Gill*, 52 ECAB 282 (2001).

history and the surveillance photographs. As Dr. Sena's report is detailed, well rationalized and based on a proper factual background, his opinion is entitled to the special weight accorded an impartial medical specialist and is sufficient to meet the Office's burden of proof to terminate appellant's compensation benefits.¹⁵

The remaining evidence of record submitted subsequent to Dr. Sena's report and prior to the Office's termination of compensation is insufficient to overcome the weight accorded him as the impartial medical specialist. Appellant submitted multiple progress reports from Dr. Iyer dated April to May 2003 and July 2003 in which Dr. Iyer found that she was unable to perform her full-time employment duties. However, these reports reiterate his stated opinion on disability and thus, are insufficient to overcome the opinion of the impartial medical specialist or create a new conflict as he was on one side of the conflict that the impartial medical specialist resolved.¹⁶

On appeal, appellant's attorney argued that Dr. Sena indicated that he needed the MRI scans to review before reaching a decision regarding her cervical condition and only found that she had no shoulder restrictions. Dr. Sena did request appellant's most recent MRI scan prior to determining whether she had a herniated cervical disc or cervical sprain. The relevant issue regarding the cervical condition, however, is whether it prevents appellant from performing her usual employment duties. Dr. Sena found that she could return to her regular employment duties and had no need for any work restrictions. The Board notes that the Office did not terminate authorization for medical treatment of appellant's cervical condition.

Counsel further argued that Dr. Iyer submitted detailed and comprehensive reports regarding appellant's condition. As noted above, however, Dr. Iyer was one side of the conflict resolved by the impartial medical specialist, and thus his additional reports are insufficient to create a new conflict as he essentially repeated his opinion on the issue of continuing disability.¹⁷

Counsel further contends that Dr. Sena relied upon an inaccurate statement of accepted facts because he did not know appellant's exact work duties. The Board finds, however, that Dr. Sena thoroughly reviewed the record, which included a position description, and opined that appellant could perform the repetitive duties required in her job as a clerk.

LEGAL PRECEDENT -- ISSUE 2

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹⁸ 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.¹⁹

¹⁵ See *Barbara J. Warren*, *supra* note 12.

¹⁶ *William Morris*, 52 ECAB 400 (2001).

¹⁷ *Id.*

¹⁸ *Pamela K. Guesford*, 53 ECAB 726 (2002).

¹⁹ *Id.*

ANALYSIS -- ISSUE 2

In this case, the Office met its burden of proof to terminate authorization for medical treatment for appellant's right wrist and right shoulder condition through the opinion of Dr. Sena, the impartial medical specialist, who found that she needed no further medical treatment. He provided rationale for his opinion by explaining that the findings on physical examination showed no continuing right wrist condition and that the minimal findings on physical examination of the right shoulder required no further treatment.

LEGAL PRECEDENT -- ISSUE 3

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that she had disability causally related to her accepted injury.²⁰ 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 medical and factual background, supporting such a causal relationship.²¹ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.²² Rationalized medical evidence is 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.²³ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.²⁴

ANALYSIS -- ISSUE 3

Subsequent to the Office's termination of compensation, appellant submitted a medical report from Dr. Iyer dated April 2004, a form report from Dr. Iyer dated September 24, 2003 and progress reports from Dr. Iyer dated November 17, 2003 to July 7, 2004. Dr. Iyer was on one side of the conflict that Dr. Sena resolved. His additional reports are insufficient to overcome the special weight accorded Dr. Sena's opinion or to create a new conflict as his opinion on the issue of appellant's continuing disability had been stated and was consistent with his additional

²⁰ *Manuel Gill, supra* note 14.

²¹ *Id.*

²² *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

²³ *Leslie C. Moore*, 52 ECAB 132 (2000).

²⁴ *Ernest St. Pierre*, 51 ECAB 623 (2000).

reports.²⁵ Appellant, consequently, has not met her burden of proof to establish continuing employment-related disability.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation benefits on the grounds that she had no further employment-related disability and properly terminated her authorization for medical treatment for her right wrist and right shoulder conditions. The Board further finds that appellant has not established that she had any continuing disability after August 28, 2003 due to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 31, 2004 is affirmed.

Issued: August 18, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

²⁵ *Alice J. Tysinger*, 51 ECAB 638 (2000).