

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CATHERINE C. MORRIS and DEPARTMENT OF DEFENSE,
DEFENSE LOGISTICS AGENCY, Philadelphia, PA

*Docket No. 03-1203; Submitted on the Record;
Issued July 23, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective February 11, 2002.

On December 14, 1999 appellant, then a 41-year-old attorney, filed a notice of traumatic injury alleging that she twisted her back at work when she attempted to catch a bathroom door that came off its hinges and fell on her. The Office accepted appellant's claim for a back strain. Appellant was off work from December 15, 1999 until November 29, 2000, when she returned to limited duty for four hours per day.

Appellant has been under the care of Dr. Robert Perkel, a family practitioner, for treatment of her work injury. Dr. Perkel ordered a magnetic resonance imaging (MRI) scan performed on January 18, 2000, which showed a small bulge at L2-3, disc bulge with annular tear at L3-4, and a disc herniation at L4-5 with possible impingement on the nerve root.¹ Dr. Perkel has maintained since November 2000 that appellant is capable of working only four hours per day due to her work injury. His disability opinion is based on physical findings reported on examination which included positive straight leg raising and weakness in the hip flexors, diagnosed by him as both a back strain and a herniated disc. To the contrary, Dr. Steven Valentino, an osteopath and Office referral physician, examined appellant and opined in an

¹ The MRI scan indicated that the diagnoses at L3-4 were unchanged from a prior study dated March 3, 1998. The March 3, 1998 MRI scan is also of record.

August 16, 2000 report that appellant was no longer disabled for full-time work.² He stated that appellant no longer had any residuals due to her accepted back strain.³

The Office determined that a conflict existed in the medical record between Dr. Perkel and Dr. Valentino as to the extent of appellant's disability for work and the presence of residuals. The Office therefore referred appellant along with a copy of the medical record, a statement of accepted facts, and a set of questions for resolution to Dr. Michael Cohen, a Board-certified neurologist, for an impartial medical evaluation. Dr. Cohen examined appellant and prepared a report on August 22, 2001, noting physical findings. He discussed appellant's history of injury on December 1, 1999 and her complaints of low back pain and parathesia into the left lower extremity. Dr. Cohen reviewed the results of appellant's MRI scans dated March 3, 1998 and January 18, 2000, stating that appellant had a preexisting disc herniation, which was temporarily aggravated by her work injury. He noted that the only pertinent findings on examination were pain over the lumbar segments and positive straight leg raising at 60 degrees. Dr. Cohen concluded that the claimant had no physical limitations at the time of his examination and that she could gradually return to full duty over a period of a month. He concluded that appellant's work-related back strain had essentially resolved, and that any complaints of low back pain were not related to the December 1, 1999 work injury. Dr. Cohen further stated that appellant had no continuing residuals due to the work injury and that any continuing complaints of back pain were attributable to her preexisting disc herniation.

In an October 10, 2001 report, Dr. Perkel expressed his disagreement with Dr. Cohen's opinion by reiterating that appellant continued to suffer residuals of the accepted work injury based on the "positive leg raiser examinations and by the weakness in hip flexors on the left."

On December 7, 2001, the Office issued a notice of proposed termination advising appellant that her compensation would be terminated insofar as the weight of medical evidence established that she was no longer totally disabled and had no residuals causally related to her work injury. The Office noted that the weight of the medical evidence rested with the opinion of the impartial medical specialist. Appellant was given 30 days to provide additional evidence or argument if she disagreed with the proposed action.

On January 7, 2002, appellant by counsel, challenged the Office's proposed termination order alleging that Dr. Cohen's medical report failed to address that appellant's most recent MRI following the work injury showed an annular tear that was not present prior to December 1, 1999. Appellant further alleged that the statement of accepted facts incorrectly stated that the work injury resulted in a back strain without consideration of the January 18, 2000 MRI report. A report from Dr. Perkel dated January 6, 2002 was also provided, wherein the

² In his August 16, 2000 report, Dr. Valentino opined that appellant had recovered from the December 1, 1999 work injury and needed no further medical care for that condition. He noted that appellant's diagnostic studies revealed long standing lumbar degenerative disc changes, which were not causally related to the work injury. Dr. Valentino indicated that appellant had the capacity for full-time, light duty work consistent with her job as an attorney. He stated that the work restrictions were due to her history of non-work related, degenerative disc disease.

³ In a September 27, 2000 report, Dr. Perkel criticized Dr. Valentino for failing to recognize that appellant's January 18, 2000 MRI scan showed an annular tear and mild indentation on the central thecal sac. He pointed out that these were new findings on the MRI scan that were attributable to the December 1, 1999 work injury.

physician reiterated his previous opinion that appellant had no back pain until her December 1, 1999 work injury, and that she continued to have residuals due to her December 1, 1999 work injury.

In a decision dated February 11, 2002, the Office terminated appellant's compensation. The Office determined based on the opinion of the impartial medical specialist that appellant no longer had any residuals or disability due to the work injury of December 1, 1999.

Appellant requested a hearing, which was later changed to a request for a review of the written record. She submitted an October 8, 2002 report from Dr. Perkel, wherein the physician stated that the January 18, 2000 MRI scan showed a new annular tear when compared to March 3, 1998 MRI scan. He noted that the radiologist interpreting the study of January 18, 2002 had even remarked that the annular tear was "new since the prior study." He reiterated that the MRI scan findings of January 18, 2000 were due to appellant's work injury, and that appellant was only capable of working four hours per day.

In a decision dated January 13, 2003, an Office hearing representative affirmed the Office's February 11, 2002 decision. The Office hearing representative specifically noted that the MRI scan dated January 18, 2000 stated that the findings at L3-4 remained unchanged from the previous study conducted prior to the work injury. He rejected appellant's argument that Dr. Cohen had not interpreted the MRI scan findings correctly, namely that Dr. Cohen's opinion was not credible since he did not consider the annular tear to be due to the work injury.

The Board finds that the Office properly terminated appellant's compensation effective February 11, 2002.

It is well established that, once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.⁴ After it is 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.⁵ Section 8123(a)⁶ provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination to resolve that conflict.⁷ When there exists 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 upon a proper factual background, must be given special weight.⁸

⁴ *John W. Graves*, 52 ECAB 160 (2000).

⁵ *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Mary A. Lowe*, 52 ECAB 223 (2001).

⁶ 5 U.S.C. § 8123(a).

⁷ See *Richard L Rhodes*, 50 ECAB 259 (1999).

⁸ *Michael Hughes*, 52 ECAB 387 (2001); *Manuel Gill*, 52 ECAB 282 (2001).

In this case appellant sustained a back strain on December 1, 1999 when a door fell on her while she was exiting the bathroom at work. Because a conflict existed in the record between Dr. Perkel and Dr. Valentino as to the nature and extent of appellant's December 1, 1999 work injury, the Office properly sent appellant for an impartial medical examination with Dr. Cohen.

The Board finds that Dr. Cohen's opinion is sufficiently well rationalized and based upon a proper factual background with respect to appellant's history of injury and the objective evidence of record. Dr. Cohen provided a reasoned medical opinion stating that appellant is no longer disabled and that she has no residuals due to the December 1, 1999 work injury. In Dr. Cohen's opinion the December 1, 1999 work injury has resolved. Since the weight of the medical opinion evidence, represented by the opinion of the impartial medical specialist, establishes that appellant has no disability or residual due to her work injury, the Office discharged its burden of proof to justify termination of appellant's compensation benefits.

The decision of the Office of Workers' Compensation Programs dated January 13, 2003 is hereby affirmed.

Dated, Washington, DC
July 23, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member