

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

N.C., Appellant)

and)

**DEPARTMENT OF HOMELAND SECURITY,
TRANSPORTATION SECURITY
ADMINISTRATION, Boston, MA, Employer**)

**Docket No. 06-988
Issued: February 21, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 29, 2006 appellant filed a timely appeal from a January 31, 2006 decision of a hearing representative of the Office of Workers' Compensation Programs who affirmed a November 29, 2004 decision terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation and medical benefits effective November 29, 2004; and (2) whether appellant established that she had any continuing employment-related disability or condition after November 29, 2004.

FACTUAL HISTORY

On August 27, 2003 appellant, then a 48-year-old transportation security screener, filed a traumatic injury claim alleging that, on August 1, 2003, she sustained herniated discs after lifting

heavy luggage onto a screening machine at Logan Airport. The Office accepted the claim for lumbar radiculopathy and paid appropriate compensation. Appellant stopped work on August 1, 2003 and did not return.

Appellant came under the care of Dr. Jill Fleming, a Board-certified family practitioner, who treated appellant since August 22, 2003. In attending physician's reports dated August 22 to September 8, 2003, Dr. Fleming noted that on August 1, 2003 appellant experienced severe bilateral foot pain after lifting luggage at work. She diagnosed herniated discs from L2-3 to L5-S1 by magnetic resonance imaging (MRI) scan. Dr. Fleming noted with a check mark "yes" that the condition was caused or aggravated by a work activity. She indicated that appellant was totally disabled. In reports dated September 29 and November 10, 2003, Dr. Fleming diagnosed lumbar spondylosis without myelopathy, displacement of lumbar disc without myelopathy, degenerative disc disease, lumbar radiculopathy and low back pain. In a reports dated January 19 and May 7, 2004, she advised that appellant could return to work in a sedentary position where she would sit seven to eight hours per day without repetitive stooping, bending, twisting, carrying, climbing, walking, kneeling, pulling or pushing, lifting was restricted to 20 pounds up to two times a day.

In an attending physician's report dated September 29, 2003, Dr. Shapur A. Ameri, a Board-certified neurosurgeon, noted that appellant sustained a lifting injury on August 1, 2003 while at work and diagnosed lumbar radiculopathy and disc bulge. On November 18, 2003 Dr. Ameri opined that appellant's low back pain, lumbar disc herniations and lumbar spondylosis was causally related to her work injury of August 1, 2003. Appellant submitted statements dated November 19 and December 29, 2003 and May 10, 2004 and advised that she was unable to perform the duties as a security screener due to her back condition.

On June 30, 2004 the Office referred appellant to Dr. David J. Cohen, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated July 20, 2004, Dr. Cohen discussed appellant's work history. He noted findings upon physical examination of no objective sign of focal neurologic dysfunction, no signs of lumbosacral radiculopathy or peripheral neural entrapment. Dr. Cohen noted that findings on the MRI scan were chronic and likely preexisted the events of August 1, 2003. He stated that any residuals of the August 1, 2003 injury were subjective and that appellant could not likely return to work either full or part time in her former capacity since the activities associated with the job would exacerbate her condition. Dr. Cohen indicated that appellant could return to work in a sedentary desk position with restrictions of standing up to 1.5 hours, reaching above the shoulders limited to 18 minutes, twisting and bending and stooping for 10 minutes, pushing and pulling up to 30 minutes, lifting for 15 minutes up to 10 pounds, squatting for 5 minutes and kneeling for 30 minutes.

The Office found a conflict of medical opinion. Dr. Fleming found residuals of appellant's work-related lumbar radiculopathy, which limited her to a sedentary capacity. Dr. Cohen determined that appellant did not have residuals of her accepted lumbar radiculopathy and opined that she could return to work eight hours per day with restrictions.

The Office referred appellant to Dr. Robert A. Levine, a Board-certified neurologist, selected as the impartial medical specialist. In a report dated September 13, 2004, he reviewed the records provided and performed a physical examination of appellant. Dr. Levine noted a

history of appellant's work-related injury. On physical examination, he noted intact reflexes, no atrophy, no palpable spasms, full straight leg raising and negative Lasegue's and Linder's signs. Dr. Levine diagnosed low back pain by history related to the lifting incident of August 1, 2003. He indicated that there were no objective findings upon physical examination to support that appellant had any ongoing residuals of the August 1, 2003 work injury. Dr. Levine noted that the MRI scan was essentially unremarkable and the minor changes that were noted were degenerative in nature and common in symptomatic individuals in appellant's age group. These findings arose unrelated to the incident of August 1, 2003. Based on the absence of objective findings on examination and review of the medical records and diagnostic studies, appellant was able to return to work full time without restrictions. Dr. Levine indicated that any restrictions would be on a subjective basis.

On October 5, 2004 the Office issued a notice of proposed termination of compensation benefits on the grounds that Dr. Levine's report dated September 13, 2004 established no residuals of the work-related employment injury.

Appellant submitted a work capacity evaluation from Dr. Fleming dated October 20, 2004. Dr. Fleming noted that appellant could return to work in a sedentary position subject to various restrictions including no lifting over 10 pounds. In a report dated October 26, 2004, she diagnosed lumbar spondylosis without myelopathy, displacement of lumbar disc without myelopathy, degenerative disc disease, lumbar radiculopathy and low back pain. Dr. Fleming advised that appellant could return to work in a sedentary position subject to various restrictions including no lifting over 20 pounds. Appellant submitted statements dated October 8 and 28, 2004, which noted that she disagreed with the proposed termination and that Dr. Fleming and the second opinion physician supported her contention that she was permanently disabled as a result of the accepted injury.

By decision dated November 29, 2004, the Office terminated appellant's compensation benefits effective that date. It found that the weight of the medical evidence established that appellant had no continuing disability resulting from her accepted employment injury.

On December 24, 2004 appellant requested an oral hearing before an Office hearing representative. The hearing was held on October 26, 2005. In a December 20, 2004 report, Dr. Paul N. Chervin, a Board-certified psychiatrist and neurologist, saw appellant in consultation regarding her persistent low back pain since her work injury of August 1, 2003. He noted that appellant did not have symptoms of radicular pain or sciatica and that her neurological examination revealed normal knee and ankle reflexes, normal sensory and strength examination and normal lumbar lordosis. Dr. Chervin diagnosed chronic low back syndrome for 16 months and opined that appellant could return to work in a sedentary position. Appellant also submitted work capacity reports prepared by Dr. Fleming dated October 19 and December 7, 2005. She could return to work in a sedentary position with no lifting over 10 pounds and no prolonged sitting or standing. In a report dated October 19, 2005, Dr. Fleming noted that appellant's back symptoms had not improved. In letters dated November 2 and 18, 2005, appellant requested that she be offered a position complying with the restrictions set forth by Dr. Fleming. She contended that the Office failed to inform her of the right to subpoena witnesses at the hearing, to have her own physician present at the second opinion examination or to provide her with a copy of the statement of accepted facts.

In a decision dated January 31, 2006, the hearing representative affirmed the November 29, 2004 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ 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.²

Where there exists a conflict of medical opinion and the case is referred to an impartial 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.³

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for lumbar radiculopathy. It determined that a conflict in medical opinion arose between appellant's attending physician, Dr. Fleming, a Board-certified family practitioner and Dr. Cohen, an Office referral physician and Board-certified neurologist. They disagreed as to whether appellant had continuing work-related disability and the appropriate work restrictions. The Office referred appellant to Dr. Levine to resolve the conflict.⁴

In a September 13, 2004 report, Dr. Levine reviewed appellant's history, reported findings an examination and noted that appellant exhibited no objective complaints or definite work-related abnormality of her back. He opined that there were no objective findings upon physical examination to support that she had any residuals of the August 1, 2003 work injury. Appellant's reflexes were found intact, there was no atrophy, no palpable spasms, full straight leg raises and negative Lasegue's and Linder's signs. Dr. Levine indicated that the MRI scan was essentially unremarkable and the minor changes that were noted were degenerative in nature and common in symptomatic individuals in appellant's age group. These changes were unrelated to the incident of August 1, 2003. Based on the absence of objective findings on examination and from a review of the medical records and diagnostic studies, appellant was able to return to work full time without restrictions.

After issuance of the pretermination notice, appellant submitted a work capacity evaluation from Dr. Fleming who set forth various work restrictions. On October 26, 2004 Dr. Fleming diagnosed lumbar spondylosis without myelopathy, displacement of lumbar disc without myelopathy, degenerative disc disease, lumbar radiculopathy and low back pain.

¹ *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

² *Mary A. Lowe*, 52 ECAB 223 (2001).

³ *Solomon Polen*, 51 ECAB 341 (2000).

⁴ *See* 5 U.S.C. § 8123(a).

However, she did not specifically address how any continuing condition or medical restrictions were causally related to the accepted August 1, 2003 employment injury. Dr. Fleming's reports are similar to her prior reports that gave rise to the conflict in medical opinion. They are insufficient to overcome that of Dr. Levine or to create a new medical conflict.⁵

The Board finds that Dr. Levine had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field. At the time benefits were terminated appellant clearly opined that appellant had absolutely no work-related reason for disability. His opinion as set forth in his report of September 13, 2004 is found to be probative evidence and reliable. The Board finds that Dr. Levine's opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits.⁶

LEGAL PRECEDENT -- ISSUE 2

After the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that she had continuing disability causally related to her accepted employment injury.⁷ To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any continuing residuals of her lumbar radiculopathy causally related to her accepted employment injuries on or after November 29, 2004. Appellant submitted a report from Dr. Chervin, who saw appellant in consultation and diagnosed chronic low back syndrome for 16 months post work injury of August 1, 2003. Dr. Chervin noted that appellant's neurological examination revealed no

⁵ See *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Fleming's reports do not contain new findings or rationale upon which a new conflict might be based.

⁶ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

⁷ *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

⁸ See *Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

abnormalities and opined that she was free from any symptoms of radicular pain or sciatica. However, appellant could not return to a standing position, which involved twisting, bending or lifting. The Board finds that Dr. Chervin did not provide a rationalized opinion specifically addressing how any continuing condition or medical restrictions were causally related to the accepted August 1, 2003 employment injury. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁹ Therefore, the report from Dr. Chervin is insufficient to overcome that of Dr. Levine or to create a new medical conflict.

Additional reports from Dr. Fleming addressed appellant's treatment for her back condition and found that her symptoms had not improved. She diagnosed herniated disc lumbosacral without myelopathy and noted that appellant could return to work in a sedentary position subject to various restrictions. As noted Dr. Fleming was on one side of a conflict that was resolved by Dr. Levine¹⁰ and her reports do not otherwise provide new findings or medical rationale sufficient to establish that any continuing condition or disability was causally related to the August 1, 2003 injury.

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between her current condition and her accepted work-related injury of August 1, 2003.¹¹ The Board has found that vague and unrationalized medical opinion on causal relationship have little probative value. Therefore, the reports from Drs. Chervin and Fleming are insufficient to overcome that of Dr. Levine or to create a new medical conflict.

CONCLUSION

The Board finds that the Office has met its burden of proof to terminate benefits effective November 29, 2004. The Board further finds that appellant failed to establish that she had any continuing disability after November 29, 2004.

⁹ See *Jimmie H. Duckett*, 52 ECAB (2201).

¹⁰ See *supra* note 6.

¹¹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 31, 2006 is affirmed.

Issued: February 21, 2007
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