

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

C.L., Appellant)

and)

**DEPARTMENT OF AGRICULTURE, FOOD
SAFETY & INSPECTION SERVICE,
Long Beach, CA, Employer**)

**Docket No. 06-810
Issued: May 3, 2007**

Appearances:

*John S. Evangelisti, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 21, 2006 appellant filed a timely appeal from a February 3, 2006 decision of the Office of Workers' Compensation Programs that denied modification of an August 29, 2005 Office 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 justify termination of appellant's wage-loss and medical benefits effective August 29, 2005; and (2) whether appellant established that she had any continuing employment-related disability or condition after August 29, 2005.

FACTUAL HISTORY

On March 18, 1983 appellant, then a 32-year-old food inspector, filed a traumatic injury claim alleging that, on March 7, 1983, she sustained an injury to her sternum when she was

examining a steer head. The Office accepted the claim for strain and separation at the costosternal junction and paid appropriate compensation. Appellant stopped work on March 8, 1983.¹

Appellant came under the care of Dr. Gilbert H. Person, a Board-certified radiologist, who treated appellant since March 8, 1983. In reports dated March 8 to May 31, 1983, Dr. Person treated appellant for her work-related rib injury and diagnosed a strain or a separation of the costosternal junction of the right side, the third, fourth and fifth ribs and advised that appellant was totally disabled. In reports dated July 5 to October 4, 1983, he indicated that appellant sustained recurrent dislocation of the anterior ribs from the upper sternum bilaterally and was totally disabled. On December 30, 1983 Dr. Person determined that appellant was permanent and stationary.

Appellant also submitted reports from Dr. James P. Pemberton, a Board-certified orthopedic surgeon, dated December 31, 1984 to November 18, 1987. Dr. Pemberton diagnosed chronic costochondritis and noted that conservative modalities failed and appellant was considering surgical intervention. In reports dated July 2 to September 30, 1992, he diagnosed chronic costochondritis and noted that a tomogram of appellant's sternum was normal. Dr. Pemberton opined that most of appellant's costochondritis and sternoclavicular joint problems were related to her large breasts and he recommended a reduction mammoplasty. In the course of developing the claim, the Office also referred appellant to several physicians.²

Appellant came under the treatment of Dr. Christopher B. Ryan, a Board-certified physiatrist. In a report dated July 27, 1998, Dr. Ryan noted a history of injury and treatment. He diagnosed myofascial syndrome involving the neck, shoulders and thorax related to the several work injuries appellant sustained in the early 1980's and opined that appellant was totally disabled. In a June 8, 2000 report, Dr. Ryan noted that a computerized tomography (CT) scan of the sternoclavicular joints and proximal sternum performed on August 5, 1999 revealed degenerative abnormalities. On January 11, 2002 he diagnosed sprain/strain of the chondrosternal region, cervical sprain with possible displacement of the cervical disc and chronic sprain of the acromioclavicular joint and sternoclavicular joint. Dr. Ryan opined that all the conditions were causally related to appellant's original work injury. In a report dated October 4, 2002, he noted that an August 22, 2002 bone scan revealed no abnormalities. Dr. Ryan

¹ On October 22, 1980 appellant injured her left shoulder at work which the Office accepted for left shoulder girdle strain and left pectoralis major muscle strain, File No. A13-629056. She filed a claim for an injury sustained in a fall at work on October 14, 1982, which the Office accepted for multiple contusions of the ribs, File No. A13-694772. These claims were consolidated into the current claim before the Board.

² On January 8, 1996 appellant was referred to a second opinion physician, Dr. David L. Crossen, a Board-certified orthopedist, to determine if she had any continuing residuals of her work-related condition. In reports dated January 24 and March 27, 1996, Dr. Crossen determined that appellant did not have residuals of her work-related condition and could return to work in a light-duty sedentary position. On May 10, 1996 the Office proposed to terminate appellant's benefits and on June 11, 1996 finalized the decision. Appellant requested reconsideration on September 19, 1996, September 30, 1997 and October 19, 1998, and the Office denied modification in decisions dated October 1, 1996, October 28, 1997 and October 30, 1998. On April 7, 1999 appellant requested reconsideration and submitted additional medical evidence. In a decision dated September 28, 1999, the Office vacated the prior decisions and determined that appellant had residuals of her work-related injury and reinstated benefits.

discounted these findings, noting that appellant's condition would produce intermittent findings. He opined that appellant continued to be totally disabled.

On October 17, 2003 the Office referred appellant to Dr. Christopher G. Palmer, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a December 11, 2003 report, Dr. Palmer discussed appellant's work history. He noted examination findings of a limited range of motion of the neck on flexion, mild tenderness along her sternoclavicular joints bilaterally without deformity or swelling, and tenderness along the anterior chest wall and sternum. Dr. Palmer opined that there was no objective evidence of residuals of a strain or separation at the costosternal junction. However, appellant had subjective pain and mild tenderness in those areas. Dr. Palmer noted that no x-ray interpretations substantiated a subluxation of the ribs or a separation of her sternoclavicular joint. He diagnosed chronic pain syndrome or chronic costochondritis; however, the normal bone scan ruled out any significant ongoing degenerative inflammatory process. Dr. Palmer indicated that appellant could return to work full time in a clerical administrative position to exclude heavy lifting.

Appellant submitted a November 5, 2003 report from Dr. Ryan, who diagnosed sprain/strain of the chondrosternal region, cervical sprain, chronic sprain of the acromioclavicular joint and sternoclavicular joint and opined that these conditions were due to her accepted work injury. Dr. Ryan further advised that appellant was totally disabled.

The Office found that a conflict of medical opinion arose between Dr. Ryan, for appellant, and Dr. Palmer, for the Office. To resolve the conflict, on December 31, 2003, the Office referred appellant to Dr. Jeffrey J. Sabin, a Board-certified orthopedic surgeon, selected as the impartial medical specialist.

On January 29, 2004 appellant, through her attorney, objected to the selection of Dr. Sabin as the referee physician. She indicated that Dr. Sabin was located 119 miles from her home, he was not chosen in accordance with the independent rotation selection process and was known to be defense oriented. In a letter dated February 9, 2004, the Office indicated that it had adhered to program procedures for selection of referee physicians. The Office noted that Dr. Sabin was properly selected by the rotational system.

In a report dated February 20, 2004, Dr. Sabin noted that he reviewed the records provided and performed a physical examination of appellant. He listed a history of appellant's work-related injury. Dr. Sabin noted findings upon physical examination of abnormal range of motion of the upper extremities with an inability to lift her shoulders above her head or abduct past 80 degrees bilaterally. He noted pain to palpation of the paraspinal cervical muscles and shoulders, severe pain to palpation of the sternoclavicular joint and costochondral junction bilaterally. Dr. Sabin advised that there were no objective findings of a sternoclavicular and rib injury, only subjective findings on examination. He opined that the bone scan revealed no abnormalities and was indicative of no active process in the sternoclavicular joint or the rib costochondral junction. Dr. Sabin advised that appellant could not return to her position as a meat inspector; however, she could perform a sedentary position as a telephone operator for eight hours per day. He opined that appellant's condition was in part due to her work-related injury, but was magnified by significant depression and neck, shoulder and knee discomfort.

In a letter dated February 26, 2004, the Office requested that Dr. Sabin clarify whether appellant had any objective findings of the accepted condition of strain and separation at the costosternal junction, whether there were residuals of her accepted work injury of 1983 and whether she was disabled from her date-of-injury position as a meat inspector.

In a supplemental report dated February 27, 2004, Dr. Sabin noted that there were no objective findings of the accepted condition of strain and separation at the costosternal junction. He further noted that there were no objective residuals of the accepted work injury of 1983. Dr. Sabin opined that appellant continued to be disabled from her date-of-injury position due to her subjective complaints.

On March 2, 2004 the Office issued a notice of proposed termination of appellant's compensation benefits on the grounds that Dr. Sabin's reports dated February 20 and 27, 2004 established no residuals of the accepted employment injury.

By letter dated March 3, 2004, appellant requested that the Office expand her claim to include strain of the costosternal region, cervical strain, displacement of the cervical disc, acromioclavicular joint sprain and chronic strain of the sternoclavicular joint. In a February 11, 2004 report, Dr. Ryan noted appellant's worsening symptoms of pain, stiffness and limited range of motion. He disagreed with the findings of the second opinion physician, Dr. Palmer, and noted that not all medical diagnoses are supported by objective findings. In a report dated March 30, 2004, Dr. Ryan disagreed with the opinion of Dr. Sabin and noted that there were objective findings of disability as noted on a CT scan which showed degeneration of the sternoclavicular joint.

On April 6, 2004 the Office terminated appellant's compensation benefits effective that same date on the grounds that the weight of the medical evidence established that she had no continuing disability resulting from her accepted employment injury.

On April 16, 2004 appellant requested an oral hearing before an Office hearing representative. The hearing was held on November 17, 2004. In a statement dated June 30, 2004, appellant asserted that the referee physician was not selected according to proper Office procedure, that he was located too far from her residence and was chosen because of his bias against claimants. Appellant indicated that Dr. Sabin was deposed on August 23, 2004 and provided testimony that was in conflict with his opinion on February 20, 2004. She indicated that Dr. Sabin testified that the diagnosis of costochondritis would be based on subjective findings of pain and that appellant's physicians were correct in surmising that there was costochondritis present since she experienced pain on palpation of the anterior breast bone.

In a letter dated December 16, 2004, the Office noted that the medical evidence did not support a finding that the additional conditions of strain of the costosternal region, cervical strain, displacement of the cervical disc, acromioclavicular joint sprain and chronic strain of the sternoclavicular joint were causally related to her work injury.

In a decision dated February 14, 2005, the hearing representative set aside the Office's April 6, 2004 decision and remanded the matter for further development. The hearing representative determined that Dr. Sabin's deposition testimony of August 23, 2004 was

inconsistent with his opinion as set forth in his medical reports. The Office was instructed to seek clarification from Dr. Sabin with regard to whether appellant's accepted condition remained active and whether the accepted condition was disabling.

By letter dated May 17, 2005, the Office requested clarification from Dr. Sabin. It asked that he address whether the accepted condition of strain and separation at the costosternal junction remained active and whether these conditions were disabling. The Office further inquired as to whether there were current findings of cervical strain, displacement of the cervical disc or acromioclavicular joint sprain and, if so, whether these conditions were causally related to appellant's work injury. The Office provided Dr. Sabin with a copy of the statement of accepted facts, his deposition testimony and the medical articles provided to the physician during his deposition.

In a report dated May 26, 2005, Dr. Sabin opined that there were no objective findings that appellant's accepted conditions of strain and separation of the costosternal junction were active and opined that appellant was not disabled. He noted subjective findings of decreased range of motion of appellant's neck and a slow and deliberate gait. Dr. Sabin indicated that there were no studies presented concerning appellant's neck or objective evidence of cervical disc displacement. He did not see physical evidence of severe crepitus over the acromioclavicular joint or severe acromioclavicular joint arthritis on an x-ray. In a report dated June 17, 2005, Dr. Sabin indicated that he received the transcript of his deposition and the medical articles reviewed during his deposition. After reviewing the articles, his opinion as set forth in his report dated May 26, 2005 would not change. Dr. Sabin disagreed with Dr. Ryan's opinion with regard to the ability of bone scanning to detect traumatic arthritis and opined that bone scans were helpful in detecting arthritis. He further opined that there was no objective evidence to support a cervical strain or displacement of the cervical disc or acromioclavicular joint sprain. Dr. Sabin referenced a February 3, 2000 MRI scan of the cervical spine which showed degenerative changes from C4-7. He referenced an MRI scan of the left shoulder dated February 3, 2000 which revealed tendinopathy of the supraspinatus tendon but no acromioclavicular joint arthritides. Dr. Sabin suggested that appellant's treating physician perform additional testing to determine if appellant had true acromioclavicular pain.

In a letter dated July 5, 2005, the Office advised Dr. Sabin to perform all the tests and studies that he would deem necessary to determine if appellant had a work-related acromioclavicular joint condition. In a statement dated July 7, 2005, Dr. Sabin noted that he would not perform additional tests because he would be construed as a treating physician rather than as an independent examiner. He opined that in order to determine if appellant had acromioclavicular joint etiology, her treating physician could perform selective acromioclavicular joint injections with a placebo in a blind fashion to determine if there truly was acromioclavicular joint discomfort.

On July 28, 2005 the Office issued a notice of proposed termination of appellant's benefits on the grounds that Dr. Sabin's reports dated May 26, June 17 and July 7, 2005 established no residuals of the work-related employment injury.

By decision dated August 29, 2005, the Office terminated appellant's medical benefits and compensation for wage loss effective that date on the grounds that the weight of the medical

evidence established that she had no continuing disability resulting from her accepted employment injury.

In a letter dated September 14, 2005, appellant requested reconsideration. She asserted that the Office improperly concluded that objective evidence was limited to concrete physiological data contending that objective evidence also included any evidence that an examining doctor could discover and substantiate. In an August 9, 2005 report, Dr. Ryan noted appellant's continued complaints of pain in the left shoulder girdle and into her chest and ribs and opined that she continued to be disabled. He performed a Brief Battery for Health Improvement test which revealed that psychological factors appeared to be a large component of appellant's chronic pain manifestation. In an August 9, 2005 report, Dr. Ryan disagreed with Dr. Sabin's opinion and asserted that some diagnoses did not have objective findings.

In a decision dated February 3, 2006, the Office denied modification of the August 29, 2005 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ 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.⁴

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for strain and separation at costosternal junction and paid appropriate compensation. The Office reviewed the medical evidence and determined that a conflict in medical opinion existed between appellant's attending physician, Dr. Ryan, Board-certified in physical medicine and rehabilitation, who disagreed with the Office referral physician, Dr. Palmer, a Board-certified orthopedist, concerning whether appellant had any continuing work-related condition and whether she could return to work. Consequently, the Office referred appellant to Dr. Sabin to resolve the conflict.⁵

The Board finds that, under the circumstances of this case, the opinion of Dr. Sabin is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related condition has ceased.

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁴ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁵ *See* 5 U.S.C. § 8123(a).

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.⁶

In a February 20, 2004 report, Dr. Sabin reviewed appellant's history, reported findings and noted that appellant exhibited no objective complaints or definite work-related abnormality in her condition. He opined that there were no objective findings upon physical examination to support that appellant had any residuals of the March 7, 1983 work injury. Dr. Sabin opined that the bone scan revealed no abnormalities which were indicative of any active process in the sternoclavicular joint or the rib costochondral junction. He opined that, based on the absence of objective findings on examination and from a review of the medical records and diagnostic studies, appellant could not return to her position as a meat inspector; however, she could perform a position as a telephone operator for eight hours per day. Dr. Sabin indicated that appellant's condition was in part due to her work-related injury, but was magnified by depression, neck, shoulder and knee discomfort. In supplemental reports dated February 27, 2004 to July 7, 2005, he noted that there were no objective findings or residual of the work-related injury of March 7, 1983 which was accepted for strain and separation at the costosternal junction. Dr. Sabin opined that appellant was not disabled from the work-related condition. He further determined that there was no objective evidence to support a cervical strain or displacement of the cervical disc or acromioclavicular joint sprain.

The Board finds that Dr. Sabin 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, Dr. Sabin clearly opined that appellant had absolutely no work-related reason for disability. His opinion as set forth in his reports of February 20, 2004 to July 7, 2005 are found to be probative evidence and reliable. The Board finds that Dr. Sabin's opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits.⁷

LEGAL PRECEDENT -- ISSUE 2

If 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.⁸ 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

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

⁷ 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).

⁸ *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

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.⁹

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 August 29, 2005. She submitted an August 9, 2005 report from Dr. Ryan who noted her continued complaints of pain in the left shoulder girdle and into her chest and ribs and opined that she continued to be disabled. Dr. Ryan performed a Brief Battery for Health Improvement test which revealed that psychological factors were a large component of appellant's chronic pain. He also submitted a report dated August 9, 2005 in response to Dr. Sabin's reports dated May 26 to July 7, 2005 and disagreed with his findings and specifically noted that contrary to Dr. Sabin's opinion some diagnoses did not have objective findings. Dr. Ryan indicated that Dr. Sabin made many contradictory statements in his reports. However, he did not specifically address how any continuing condition or medical restrictions were causally related to the accepted March 7, 1983 employment injury. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹⁰ Additionally, Dr. Ryan's reports are similar to his prior reports which gave rise to a conflict in medical opinion.¹¹

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 March 7, 1983.

On appeal, appellant asserts that Dr. Sabin, provided inconsistent and contradictory opinions. However, the Board finds that Dr. Sabin found that there were no objective findings that appellant's accepted work-related conditions of strain and separation at costosternal junction were active or that appellant was not disabled from this condition. The record reveals that the Office conducted additional development as directed by the hearing representative and obtained clarification from Dr. Sabin regarding statements made in a deposition and his medical reports provided to the Office.¹² The Office properly determined that the weight of the medical evidence

⁹ See *Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

¹⁰ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹¹ 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. Ryan's reports do not contain new findings or rationale upon which a new conflict might be based.

¹² When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. *Phillip H. Conte*, 56 ECAB ____ (Docket No. 04-1524, issued December 22, 2004).

rested with the opinion of Dr. Sabin who opined that appellant had no disability causally related to her accepted work injury.

Appellant also contends that the Office's "questions for resolution" which were sent to Dr. Sabin were leading and improperly placed the burden of proof for providing objective evidence of continuing residuals of her work injury on appellant. The Office noted that the regulations at 20 C.F.R. § 10.501(a)(2) provide: "The physician's opinion must be based on the facts of the case and the complete medical background of the employee, must be one of reasonable medical certainty and must include objective findings in support of its conclusions. Subjective complaints of pain are not sufficient, in and of themselves, to support payment of continuing compensation." Contrary to appellant's contention, the Office's questions do not hold the appellant to an improper burden of proof. The Office advised the physician to consider objective and subjective findings, noting that subjective findings alone are not sufficient to prove continuing residuals. Therefore, the Board finds this argument to be without merit.

Appellant asserted that the Office failed to select a referee physician in accordance with the independent rotational selection process and that Dr. Sabin was defense oriented. However, she submitted no evidence to support her assertion that any particular aspect of the selection created bias. The Board has held that an impartial medical specialist properly selected under the Office's rotational procedures will be presumed unbiased and the party seeking disqualification bears the substantial burden of proving otherwise; mere allegations are insufficient to establish bias.¹³ Appellant's mere allegation of bias on the part of Dr. Sabin does not establish the fact. Therefore, the Board finds this argument to be without merit.

Finally appellant asserts that the Office ignored evidence supporting acceptance of additional conditions as work related. However, as the Office did not issue a final decision with regard to appellant's claim for strain of the costosternal region, cervical strain, displacement of the cervical disc, acromioclavicular joint sprain and chronic strain of the sternoclavicular joint, the Board does not have jurisdiction over the matter.¹⁴

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.

¹³ See *William Fidurski*, 54 ECAB 146 (2002).

¹⁴ See 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 3, 2006 and August 29, 2005 are affirmed.

Issued: May 3, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board