

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

M.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Princeton, NJ, Employer**

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**Docket No. 06-1640
Issued: May 4, 2007**

Appearances:

*Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 12, 2006 appellant, through counsel, filed a timely appeal of a February 14, 2006 merit decision of an Office of Workers' Compensation Programs' hearing representative, affirming the termination of her compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this termination case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation effective January 25, 2005 on the grounds that she no longer had any residuals or disability causally related to her January 10, 2001 employment-related injury; and (2) whether appellant established that she had any continuing employment-related residuals or disability after January 25, 2005.

FACTUAL HISTORY

On January 16, 2001 appellant, then a 34-year-old part-time flexible city carrier, filed a traumatic injury claim alleging that on January 10, 2001 she sustained injury as the result of a

motor vehicle accident which occurred in the performance of duty.¹ She struck her knees on the dashboard, glass from the windshield fell into her right eye and she jammed her left shoulder, hip and wrist into a tray. Appellant sustained a possible herniated cervical disc, back pain, bruises and cuts to both knees, numbness and pain in both upper extremities, a scratched cornea, glass in her right hand, headaches and bruises to both hips and legs.

By letter dated February 28, 2001, the Office accepted appellant's claim for contusions of the left hip and bilateral knees and cervical and lumbar strains. By letter dated December 4, 2001, the Office authorized right knee arthroscopic surgery, which was performed on December 27, 2001 by Dr. Leon N. Costa, an attending Board-certified orthopedic surgeon. The Office accepted a right knee meniscus tear. It paid appropriate compensation as of January 27, 2002. On July 2003 the Office accepted that appellant sustained a recurrence of disability on May 2, 2001 causally related to the January 10, 2001 employment-related injury. Dr. Costa submitted subsequent reports addressing appellant's residuals and total disability.

In a December 31, 2003 investigative memorandum, the employing establishment stated that appellant was observed performing various activities beginning on January 7, 2003 which were recorded on videotape. It alleged that she made deceptive statements that were in direct conflict with the observations recorded on videotape during an interview. Appellant stated that she had medical restrictions which included no lifting and carrying. Her typical day started by getting up, taking care of her baby and intermittently sitting on the couch. Appellant related that prior to the employment injury, she jogged, lifted weights and squat pressed 315 pounds. She further related that her husband had to carry everything including the laundry. Appellant noted that she currently performed stretching exercises and lifted light weights for therapeutic reasons. The employing establishment stated that in the videotape appellant appeared to be in excellent shape with defined muscle tone. She was seen carrying objects that conflicted with her statement that her husband had to carry everything for her. On several dates, appellant was observed walking her dogs for over an hour. The employing establishment concluded that she showed no signs of discomfort.

By letter dated January 26, 2004, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. David Rubinfeld, a Board-certified orthopedic surgeon, for a second opinion medical examination. In a report dated February 12, 2004, Dr. Rubinfeld reviewed the medical records and provided findings on physical examination. He stated that appellant's employment-related contusions of the left hip and both knees and cervical and lumbar sprains had resolved. Dr. Rubinfeld found no objective findings of these conditions on physical examination. He opined that appellant had a thoracic outlet syndrome of the left upper extremity, which limited her ability to lift and carry a postal bag. Dr. Rubinfeld stated that this condition was not related to the January 10, 2001 employment injury and there was no work-related disability. He opined that the surveillance tape showed that appellant engaged in strenuous activity, which was not inconsistent with thoracic outlet

¹ Prior to the instant claim, the Office accepted that, as a result of a motor vehicle accident on April 15, 2000, appellant sustained cervical and lumbar strains. By decision dated November 29, 2001, the Office denied her recurrence of disability claim. In an August 16, 2002 decision, an Office hearing representative set aside the November 29, 2001 decision and remanded the case to the Office. On remand, the Office issued a decision on December 7, 2002, denying appellant's recurrence of disability claim.

syndrome but consistent with the resolution of her accepted employment-related injuries. Dr. Rubinfeld concluded that she was not totally disabled. In a February 9, 2004 work capacity evaluation (Form OWCP-5c), he stated that appellant could not perform her regular work duties due to left thoracic outlet syndrome which was unrelated to her accepted employment injury. However, she could work eight hours a day with restrictions.

The Office found a conflict in the medical opinion evidence between Dr. Costa and Dr. Rubinfeld regarding the extent of appellant residuals and disability for work. By letter dated April 29, 2004, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Robert Dennis, an orthopedic surgeon, for an impartial medical examination.

In a May 27, 2004 report, Dr. Dennis reviewed the history of appellant's April 15, 2000 and January 10, 2001 employment injuries, medical treatment and employment and social background. He reported her current symptoms and essentially normal findings on physical examination with regard to her knees, wrists and hands. On examination of appellant's left shoulder, he stated that she was postoperative and was still receiving physical therapy. Dr. Dennis indicated that the left shoulder did not function normally. There was a small click. He stated that the examination was impaired by the fact that he did not want to put extra pressure on the healing tissues. Dr. Dennis reported a normal left shoulder based on neurological examination. He reviewed appellant's medical records including, those related to the April 15, 2000 employment injuries, although he stated that it was his understanding that he only address the January 10, 2001 employment injuries. Dr. Dennis stated that appellant had a complex medical history. He attributed the abnormal magnetic resonance imaging (MRI) scan of the right knee, surgery on her right wrist and thoracic outlet syndrome surgery on the left shoulder to the April 15, 2000 employment injuries and her pregnancy.

Regarding the January 10, 2001 employment injury, Dr. Dennis opined that appellant sustained contusions of both knees. The soft tissue injuries to the left knee, the cervical and lumbar sprains, bursitis of the left hip and quadriceps tendinitis had all resolved. Dr. Dennis stated that appellant's present diagnoses possible thoracic outlet syndrome was postoperative, pregnancy, internal derangement of the left knee, cervical and lumbar sprains and de Quervain's syndrome of the right wrist which were not related to the January 10, 2001 employment injury. He concluded that she could return to full-duty work with no restrictions and that she did not require any further medical treatment.

By letter dated November 1, 2004, the Office issued a notice of proposed termination of appellant's compensation based on Dr. Dennis' medical opinion. The Office provided 30 days in which appellant could respond to this notice.

The Office received an April 6, 2004 prescription and a July 12, 2004 letter from Dr. Paul J. P. Bolanowski, a Board-certified thoracic surgeon. He stated that appellant was postresection of the first rib on the left for thoracic outlet syndrome surgery and ordered physical therapy. It also received treatment notes covering the period April 20 to July 30, 2004 from appellant's physical therapists.

By letter dated November 10, 2004, appellant, through counsel, disagreed with the Office's proposed termination. Counsel argued that Dr. Dennis' medical opinion was insufficient to terminate appellant's compensation benefits, as it was based on an inaccurate medical history. Dr. Dennis stated that he was restricted to only addressing appellant's employment-related right knee condition, which was the only condition caused by the January 10, 2001 employment injury according to the Office's statement of accepted facts. Counsel contended that the report of the impartial specialist was not rationalized because he stated that appellant had fully recovered from her right knee injury despite the fact that she underwent arthroscopic right knee surgery on November 27, 2001 to remove part of her knee. Counsel also contended that Dr. Dennis failed to provide medical rationale in support of his opinion.

In a decision dated January 24, 2005, the Office terminated appellant's compensation benefits effective January 25, 2005 based on Dr. Dennis' impartial medical opinion.

On February 3, 2005 appellant, through counsel, requested an oral hearing before an Office hearing representative. She submitted an OWCP-5c form dated September 29, 2004 from Dr. Henry E. David, an orthopedic surgeon, who stated that she could not perform her regular work duties but that she could work eight hours a day with restrictions. In an August 27, 2004 report, Dr. Carl G. Quillen, a Board-certified plastic surgeon, stated that appellant had left medial epicondylitis which may have been related to some of her postoperative therapy. In a March 1, 2004 report, Dr. Quillen stated that appellant had de Quervain's stenosing tenosynovitis of the right wrist that had been surgically treated with some residual tenderness, intersection syndrome of the right forearm that had been surgically treated and was asymptomatic, continuing pain in the left upper extremity with evidence supporting thoracic outlet syndrome, possible mild flexor tenosynovitis of the left small and ring fingers and persistent pain in the left paracervical muscles. He opined that the diagnosed conditions were caused by the April 15, 2000 and January 10, 2001 employment-related injuries and appellant's symptoms were consistent with the circumstances of the accepted employment-related conditions. Dr. Quillen concluded that the January 10, 2001 employment injury aggravated the April 15, 2000 employment-related de Quervain's tendinitis and intersection syndrome.

In form reports dated August 30 and October 17, 2005, Dr. Jeffrey J. Miller, a Board-certified physiatrist, stated that appellant could perform light-duty work eight hours a day with restrictions. In an October 20, 2005 narrative report, he stated that appellant was status post right de Quervain's tenosynovitis and release of the first dorsal compartment. Appellant was status post intersectional syndrome of the right wrist, subtotal medial meniscectomy and thoracic outlet syndrome on the left and first rib resection on the left with significant residual symptomatology. She was also status post-traumatic cervical strain/sprain injury with residual symptomatology. Dr. Miller opined that the diagnosed conditions were caused by the April 15, 2000 and January 10, 2001 employment injuries. He stated that the later incident aggravated the conditions appellant sustained in the initial employment incident. Dr. Miller further stated that her injuries were permanent which affected her ability to use her left upper extremity to perform repetitive activities. He indicated that appellant was tolerating light-duty work with no repetitive lifting of the left upper extremity. Dr. Miller concluded that if this restriction could not be accommodated on a long-term basis, then appellant would be unable to perform her regular work duties.

Following a November 29, 2005 hearing, appellant submitted the August 13, 2002 report of Dr. Bolanowski who provided a history of her April 15, 2000 and January 10, 2001 employment incidents. Dr. Bolanowski recommended surgery for her thoracic outlet syndrome on the left after she delivered her baby. On June 29, 2004 he recommended continued physical therapy for appellant's postresection of the first rib for thoracic outlet syndrome. In an August 12, 2003 OWCP-5c form, Dr. Bolanowski stated that appellant had a thoracic outlet syndrome on the left due to the April 15, 2000 and January 10, 2001 employment injuries. He further stated that her condition worsened after resection surgery.

Vascular laboratory results dated October 8, 2001 listed thoracic outlet syndrome of the left arm, obliteration of pulse volume recording noted with left arm directly overhead and with military salute position. The right arm was negative for thoracic outlet syndrome. MRI scans of appellant's left shoulder were performed on November 18, 2004; they did not demonstrate a rotator cuff tear. They also revealed significant supraspinatus tendinopathy. A February 16, 2005 treatment note from appellant's physical therapist addressed the pain in appellant's left shoulder, elbow and neck and medical treatment. On January 10, 2005 Dr. Miller performed nerve conduction and electromyogram studies which demonstrated no evidence of carpal tunnel syndrome. Ulnar neuropathy or cervical radiculopathy of the left upper extremity was demonstrated. An unsigned and undated report stated that appellant's shoulder pain had worsened.

A January 14, 2005 MRI scan of the cervical spine was normal. Treatment notes dated December 28, 2004, January 8 and 26, 2005 contained the typed name of Dr. C. Alexander Moskwa, Jr., a Board-certified orthopedic surgeon, and addressed appellant's left shoulder problems. The December 28, 2004 note apparently signed by Dr. Moskwa stated that appellant sustained left shoulder adhesive capsulitis status post first rib resections for thoracic outlet syndrome.

By letter dated January 3, 2006, the employing establishment responded to appellant's hearing testimony. It stated that, as a letter carrier, she was required to lift a maximum of 70 pounds and not 75 pounds as stated by appellant. The employing establishment submitted photographs taken of appellant as part of an investigation, which showed her performing various physical activities. The employing establishment noted that a light-duty position was created for her based on her medical restrictions. Appellant began working on September 7, 2005 and had worked on a regular basis.

On February 11, 2002 Dr. Costa provided a date of injury as January 10, 2001. He stated that appellant sustained internal derangement with suspected medial meniscus tear. Dr. Costa indicated with an affirmative mark that the diagnosed condition was caused or aggravated by an employment activity. In a February 4, 2002 OWCP-5c form, he indicated that appellant could return to work eight hours a day with restrictions. With regard to appellant's right knee, she could return to full-duty work. Regarding her hand, Dr. Costa stated that her hand surgeon should be contacted as to her limitations.

By decision dated February 14, 2006, a hearing representative affirmed the January 24, 2005 decision. The hearing representative found that Dr. Dennis' May 27, 2004 report constituted the weight of medical opinion.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. 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.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

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.⁴

ANALYSIS -- ISSUE 1

The Board finds that a conflict in the medical opinion evidence arose between Dr. Costa, an attending physician, and Dr. Rubinfeld, an Office referral physician, as to whether appellant had any continuing residuals or disability causally related to her accepted January 10, 2001 employment-related injury. Her claim was accepted for contusion of the left hip and both knees, cervical and lumbar strains and meniscus tear of the right knee. Dr. Costa opined that appellant continued to have residuals and disability due to the accepted employment-related conditions. Dr. Rubinfeld opined that, although appellant could not perform her regular work duties due to thoracic outlet syndrome of the left shoulder, the accepted employment-related conditions had resolved and she was capable of working eight hours a day with restrictions.

The Office referred appellant to Dr. Dennis, selected as the impartial medical specialist. In a May 27, 2004 report, Dr. Dennis provided essentially normal findings with regard to appellant's knees, wrists and hands. He opined that the soft tissue injuries to the left knee, the cervical and lumbar sprains, bursitis of the left hip and tendinitis of the quadriceps had all resolved. Dr. Dennis stated that appellant's possible thoracic outlet syndrome of the left shoulder, pregnancy, internal derangement of the left knee, cervical and lumbar sprains and de Quervain's syndrome of the right wrist were not related to the January 10, 2001 employment-related injuries. He stated that her right wrist surgery and thoracic outlet syndrome condition were related to the April 15, 2000 employment injury. Dr. Dennis concluded that appellant could return to regular full-duty work with no restrictions resulting from the accepted January 10, 2001 employment injuries at issue here.

The Board finds that Dr. Dennis' opinion is based on a proper factual and medical background and is entitled to special weight. He found that appellant no longer had any residuals or disability causally related to the January 10, 2001 employment-related contusions of

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

³ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁴ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

the left hip and bilateral knees, cervical and lumbar strains and right knee meniscus tear. For this reason, his report constitutes the special weight of the medical opinion evidence afforded an impartial medical specialist.

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.⁵ 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.⁶ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ 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.⁸

ANALYSIS -- ISSUE 2

The relevant medical evidence regarding continuing employment-related residuals and disability after January 25, 2005 includes medical reports from Dr. Miller who found that appellant could perform light-duty work eight hours a day with restrictions. He did not state that appellant had any residuals or disability causally related to her accepted contusions of the left hip and bilateral knees, cervical and lumbar strains and right knee meniscus tear. The Board finds that his reports are insufficient to establish appellant's claim of continuing residuals or disability due to the accepted injury.

Dr. Miller's October 20, 2005 report found that appellant's status post right de Quervain's tenosynovitis, release of the first dorsal compartment, status post intersectional syndrome of the right wrist and subtotal medial meniscectomy and thoracic outlet syndrome on the left and first rib resection on the left with significant residual symptomatology and post-traumatic cervical strain/sprain with residual symptomatology were caused by her April 15, 2000 and January 10, 2001 employment injuries. He opined that the latter employment injury aggravated the former employment injury. Dr. Miller stated that appellant's injuries were permanent but that she could perform light-duty work with the restriction of no lifting her left upper extremity. The Board notes that the only conditions accepted by the Office were contusions of the left hip and bilateral knees, cervical and lumbar strains and right knee meniscus

⁵ See *Manuel Gill*, 52 ECAB 282 (2001).

⁶ *Id.*

⁷ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

tear. Where an employee claims that a condition not accepted by the Office is due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁹ Dr. Miller did not explain, with adequate medical rationale, how appellant's diagnosed conditions were causally related to the accepted January 10, 2001 employment-related injury or how that injury had aggravated any preexisting conditions.¹⁰ The Board finds that Dr. Miller's report is insufficient to establish appellant's claim.

A February 16, 2005 treatment note from appellant's physical therapist does not constitute probative medical evidence inasmuch as a physical therapist is not considered a physician under the Federal Employees' Compensation Act.¹¹

An unsigned treatment note of Dr. Moskwa is of no probative value.¹² As the report lacks proper identification, the Board finds that it does not constitute probative medical evidence sufficient to establish appellant's burden of proof.¹³

Appellant has not submitted sufficient rationalized medical evidence establishing that she has any continuing residuals or disability causally related to her accepted January 10, 2001 employment-related conditions.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective January 25, 2005 on the grounds that she no longer had any residuals or disability causally related to her January 10, 2001 employment-related injuries. The Board further finds that appellant has failed to establish that she had any continuing employment-related residuals or disability after January 25, 2005.

⁹ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁰ *Richard A. Neidert*, 57 ECAB ____ (Docket No. 05-1330, issued March 10, 2006); *Alice J. Tysinger*, 51 ECAB 638 (2000) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹¹ 5 U.S.C. §§ 8101-8193; 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 (2000) (a physical therapist is not a physician under the Act).

¹² *Ricky S. Storms*, 52 ECAB 349 (2001).

¹³ *Vickey C. Randall*, *supra* note 11; *Merton J. Sills*, 39 ECAB 572 (1988) (reports not signed by a physician lack probative value).

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2006 decision of the Office of Workers' Compensation Programs' hearing representative is affirmed.

Issued: May 4, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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