

injury.² The Office accepted her claim for unspecified head injury and concussion, acute cervical spine strain, right-sided herniated disc at level C5-6, neck sprain and displacement of cervical intervertebral disc without myelopathy on the right. Appellant received compensation benefits.

In an April 7, 2009 report, Dr. Mark K. Chang, a Board-certified orthopedic surgeon, noted that appellant returned after a long hiatus. He had recommended surgery for C5-6 anterior discectomy and fusion the previous year but the request was denied and appellant was referred for a functional capacity evaluation. Dr. Chang explained that the evaluation aggravated appellant's neck and right arm pain and she was unable to complete testing. As a result, her permanent restrictions were not determined and appellant was in a "state of limbo ever since last year." Dr. Chang advised that appellant was very symptomatic and had very limited range of motion to the right. He explained that her neurologic examination revealed mild weakness in left wrist extension and elbow flexion, decreased sensation to pinprick to lateral forearm extending into thumb and index finger, and decreased reflexes. Dr. Chang recommended surgery and opined that appellant's condition remained the same and that she could not return to work.

On July 28, 2009 the Office referred appellant to Dr. Rodrigo Ubilluz, a Board-certified psychiatrist and neurologist, for a second opinion examination to determine whether she had residuals of the March 30, 2005 work injury and her ability to return to work. It included a statement of accepted facts, a set of questions and the medical record.

In a report dated August 20, 2009, Dr. Ubilluz, described the history of injury and medical treatment, and conducted a physical examination. He noted that appellant had a normal electromyography (EMG) scan and nerve conduction studies. Dr. Ubilluz made no objective findings to support appellant's subjective complaints. He explained that he could not establish a clear connection of the accident to her neck condition. Dr. Ubilluz noted that appellant indicated that it was a five-pound light fixture that fell upon her. He opined that it could have been an aggravation of a preexisting condition, which would be permanent based upon her subjective symptoms; but the lack of objective findings made the statement "untenable." He found that any aggravation ceased three years prior and that appellant had reached maximum medical improvement. Dr. Ubilluz noted that appellant's medications were in a group of narcotics which were addictive. He advised that appellant needed some limitations to deal with her depression and her hypertension. Dr. Ubilluz completed a work capacity evaluation which finding that she was capable of working an eight-hour workday with prescribed physical limitations.

In an October 22, 2009 addendum, Dr. Ubilluz noted that he had reviewed the cervical spine magnetic resonance imaging (MRI) scan of January 11, 2006 which showed minor disc bulging and a mild right-sided disc herniation at C5-6. He stated that the March 26, 2007 MRI scan of the cervical spine revealed mild degenerative changes in the cervical spine with only a small right paracentral disc protrusion at C5-6 indenting the thecal sac, but without compressing the cord or causing substantial stenosis. Dr. Ubilluz advised that the cervical spine x-ray did not show a spine fracture and the January 28, 2008 electromyography (EMG) scan was within normal limits. He stated that appellant's symptoms "do not adjust to a clinical presentation of a

² The record reflects that appellant has preexisting hypertension and major depression.

cervical radiculopathy in the C5 or C6 roots.” Dr. Ubilluz reiterated that his opinion remained unchanged.

On October 29, 2009 the Office found that Dr. Ubilluz’ report created a conflict in medical opinion with appellant’s attending physician on the issues of the nature and extent of any ongoing residuals of the work injury and appellant’s capacity for work.

On January 15, 2010 the Office referred appellant, together with a statement of accepted facts, and the medical record, to Dr. Norman V. Kohn, a Board-certified psychiatrist and neurologist, for an impartial medical evaluation.

In a March 11, 2010 report, Dr. Kohn reviewed appellant’s history of injury and medical treatment. He examined her and noted that she was moderately obese and moderately depressed. Dr. Kohn determined that appellant tolerated 10 degrees of neck extension, but complained of pain with turning of her head 20 degrees to the right and 30 degrees to the left. He noted that she showed no discomfort with lesser ranges of movement. Dr. Kohn found that neck flexion was unimpaired and there was mild tenderness of the right supraclavicular fossa along the lateral aspect of the right forearm. He explained that he had reviewed MRI scans from January 11, 2006 and March 26, 2007 which revealed multilevel disc bulging and a small right-sided disc herniation at C5-6. The latter MRI scan revealed degenerative disc disease throughout the cervical spine and a small right paracentral C5-6 disc protrusion indenting the thecal sac, but not compressing the cord or causing significant spinal stenosis. The cervical spine x-rays were normal and that appellant did not have a clinical presentation of cervical radiculopathy.

Appellant related that she had persistent neck pain and local muscle tenderness in the neck and right arm, with some pain and tenderness in the left arm. Dr. Kohn explained that her chronic pain symptoms were most consistent with a fibromyalgia-spectrum condition, and most likely related to chronic degenerative joint disease and a preexisting condition of chronic fatigue syndrome. He also diagnosed depression, and explained that it was another preexisting condition which was an aggravating factor that affected her activity tolerance. Dr. Kohn explained that her pain experience was a contributing factor in her reaction to chronic pain and degenerative spine disease. He found no evidence to relate her current symptoms or functional limitations to her March 30, 2005 injury, as her current symptoms were due to preexisting conditions. Dr. Kohn explained that the record only supported a temporary aggravation of her underlying chronic pain syndrome, with resolution within three months after the accident. He advised that there were no restrictions attributable to the work injury. Dr. Kohn opined that appellant had degenerative disease as well as deconditioning and experienced a severe functional limitation. He explained that she would be capable of sedentary and light work. Dr. Kohn explained that her cognitive function was not impaired and advised that she was capable of light work due to the preexisting conditions. He advised that the nursing tasks should not involve lifting greater than five pounds, repetitive neck movements, or intensive head and neck movements.

On March 23, 2010 the Office issued a notice of proposed termination of compensation on the basis that the weight of the medical evidence, as represented by the report of Dr. Kohn, established that the residuals of the work injury of March 30, 2005 had ceased.

In a letter dated April 8, 2010, appellant noted that she continued to have residuals from the work injury which were disabling. She received benefits from social security and the Office of Personnel Management, both of which relied upon the same medical evidence to find that she was disabled.

The Office received treatment notes dated May 26 of an illegible year and provider, a copy of a July 21, 2008 letter from the Office of Personnel Management which found that she was disabled due to a cervical condition, a copy of a March 24, 2007 letter from the Social Security Administration, which found that she was disabled and copies of previously received diagnostic reports.

By decision dated June 14, 2010, the Office terminated appellant's compensation benefits effective that date on the grounds that appellant had no continuing residuals of her work injury.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁵ 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.⁶

Furthermore, the Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.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 a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸

ANALYSIS

The Office determined that a conflict of medical opinion arose regarding the nature and extent of any ongoing residuals of the March 30, 2005 work injury. This was based on the opposing opinions of Dr. Chang, appellant's physician, and Dr. Ubilluz, a Board-certified

³ *Curtis Hall*, 45 ECAB 316 (1994).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁶ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁷ 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁸ *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

orthopedic surgeon and second opinion physician.⁹ The Office properly referred appellant to an impartial medical examiner, Dr. Norman V. Kohn, a Board-certified orthopedic surgeon.

The Board finds that Dr. Kohn's March 11, 2010 report is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight. Dr. Kohn found that residuals of appellant's employment injury had ceased. He provided an extensive review of appellant's medical history and reported his examination findings. Dr. Kohn determined that there were no objective findings to correspond with appellant's subjective complaints which included persistent neck pain and local muscle tenderness in the neck and right arm, and some pain and tenderness in the left arm. He explained that her chronic pains were most consistent with fibromyalgia-spectrum condition, and were most likely related to chronic degenerative joint disease and a preexisting condition of chronic fatigue syndrome. Additionally, Dr. Kohn diagnosed depression, and explained that it was another preexisting condition which was an aggravating factor that affected her activity tolerance. He advised that there was no evidence to link her current symptoms or functional limitations, with her March 30, 2005 injury. Dr. Kohn opined that appellant had a temporary aggravation of her underlying chronic pain syndrome, with resolution within three months after accident. He also determined that there were no restrictions attributable to the work injury although she did have limitations due to her nonaccepted conditions.

The Board finds that he gave a reasoned opinion that there were no current objective findings of residuals of the March 30, 2005 work injury. Dr. Kohn noted that there was no evidence on examination related to the work injury and answered questions posed by the Office. He determined that there was no objective basis on which to attribute any symptoms or disability to the accepted employment injury. In these circumstances, the Office properly accorded special weight to the impartial medical examiner's March 11, 2010 findings.

When an impartial medical specialist is asked to resolve a conflict in medical evidence, his opinion, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹⁰ The Board finds that Dr. Kohn's report represents the weight of the medical evidence and established that there were no ongoing objective findings of residuals of the work injury of March 30, 2005.

Subsequent to the evaluation by Dr. Kohn and prior to the termination of benefits, the Office received copies of the previously received diagnostic reports which included the January 11, 2006 and March 26, 2007 MRI scans. However, these reports merely stated findings of the tests and did not address the cause of appellant's condition. Appellant did not submit any current medical evidence supporting continuing residuals of the accepted conditions.

Appellant also alleged that she had been found disabled by other government agencies. The Board has noted that findings of other government agencies are not dispositive with regard

⁹ As previously noted, appellant's treating physician, Dr. Chang reported that appellant continued to be totally disabled and that her disability was the direct result of her March 15, 2000 employment injury, while Dr. Ubilluz, the second opinion physician, indicated that appellant no longer had any residuals of the accepted work injury.

¹⁰ *Supra* note 8.

to questions arising under the Act.¹¹ As noted above, Dr. Kohn was accorded special weight. His report established that there were no ongoing objective findings of residuals of the work injury of March 30, 2005.

On appeal appellant argued that she still has residuals which are not aggravated by her preexisting conditions. However, as explained above, the weight of the medical evidence rests with Dr. Kohn who found no continuing residuals of the accepted conditions. Appellant also alleged that the Office engaged in doctor shopping when it referred her for a subsequent impartial medical examination.¹² The Act and Board precedent provide that the Office has the authority to develop the medical evidence as it deems necessary. There is no evidence that the Office acted improperly in referring appellant to Dr. Kohn.¹³

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective June 14, 2010.

¹¹ *Ernest J. Malagrida*, 51 ECAB 287, 291 (2000).

¹² The record reflects that in prior years the Office referred appellant to various physicians, including an impartial specialist in 2007, regarding the nature and extent of her condition.

¹³ *See* 5 U.S.C. § 8123(a); *Lynn C. Huber*, 54 ECAB 281 (2002) (section 8123(a) authorizes the Office to require an employee who claims compensation to undergo a physical examination as it deems necessary; the determination of the need for an examination, the choice of locale and the choice of medical examiners are matters within the province and discretion of the Office).

ORDER

IT IS HEREBY ORDERED THAT the June 14, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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