

U.S. DEPARTMENT OF LABOR
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. seq. of Patricia H. Andrew, employed by the Department of Treasury, Glyngo, Georgia, case file number 06-0738221. The hearing was held on November 8, 2005, in Atlanta, Georgia.

The issue is whether or not the Office met its burden of proof to terminate compensation

The Department of Treasury employed the claimant, Patricia H. Andrew, born August 13, 1952, as a Branch Chief in Glyngo, Georgia. She timely filed a claim for an injury at work on September 27, 1999, when she tripped and fell over a sidewalk. The claim was developed by the Office to accept right knee strain, bilateral knee and hand abrasions, lumbar strain, and a right shoulder strain that had resolved by October 14, 1999. The claimant returned to restricted duties on October 1, 1999. She subsequently stopped work on January 31, 2002, and has not returned. Appropriate wage-loss compensation and medical benefits were paid by the Office.

The Office referred the claimant for a second opinion medical examination with Douglas P. Hein, M.D., on November 25, 2002. The Office subsequently determined that there existed a conflict in medical opinion regarding the nature and extent of any remaining injury-related medical residuals and disability. The claimant was referred for examination by a referee medical specialist, William W. Buckingham, M.D., to resolve the conflict.

The claimant was examined by Dr. Buckingham on July 15, 2003. On November 7, 2003, the Office terminated the claimant's entitlement to wage-loss compensation and medical benefits based upon Dr. Buckingham's opinion that the claimant did not suffer from any continuing injury-related medial residuals or disability. The claimant disagreed with the Office decision and her attorney, Paul Felser, requested an oral hearing. The hearing was held on June 22, 2004, in Atlanta, Georgia.

By decision dated September 20, 2004, the hearing representative determined that Dr. Buckingham's opinion was not sufficiently rationalized. The Office decision of November 7, 2003, was set aside and the case was remanded for further development of the medical evidence. The hearing representative directed the Office to obtain supplemental reasoned opinion from Dr. Buckingham explaining whether the claimant had any ongoing work-related right knee condition or myofascial pain syndrome causally related to the September 27, 1999, work injury.

The claimant had documented pre-existing right knee problems for which she had surgery and degenerative joint disease. The claimant was diagnosed with common variable immunodeficiency (CVID) in April, 1999.

By letter dated November 5, 2004, the Office requested that Dr. Buckingham respond to two questions. First, Dr. Buckingham was asked if, given the diagnostic evidence in the file, the claimant had an ongoing work-related right knee condition due to the September 27, 1999, injury. Dr. Buckingham was asked to explain that answer. Second, Dr. Buckingham was asked if he believed that the claimant had myofascial pain syndrome due to the work injury. Dr. Buckingham was not asked to provide reasoning in support of his opinion. The hearing representative noted that Dr. Buckingham failed to address whether or not the claimant had a torn posterior cruciate ligament as reported in an April 4, 2000, MRI study. The Office did not ask Dr. Buckingham to address that specific issue in its request for supplemental and clarifying opinion.

Dr. Buckingham responded by letter of November 4, 2004. He stated that if there were damage to the ACL from the fall of September 27, 1999, it would have been seen on the MRI of April 4, 2000. He explained that any instability of the ACL occurred after that date and he therefore believed that the claimant's current condition was unrelated to the incident of September 27, 1999, and was due to degenerative disc disease in the right knee. In regard to the Office's second question, Dr. Buckingham stated the claimant did not have myofascial pain syndrome due to her fall at work on September 27, 1999. Dr. Buckingham explained that the claimant had multiple complaints of pain about the shoulder girdle musculature. He noted the claimant's disabilities were all self-reported and the reported disability far outweighed the physical findings. Dr. Buckingham noted the claimant had a good functional range of motion of the upper extremities and normal strength. Dr. Buckingham suggested that the claimant's continuing muscular complaints of pain were most likely a manifestation of depression. Dr. Buckingham did not discuss the issue of a posterior cruciate ligament tear.

By letter dated December 16, 2004, the Office advised the claimant that it proposed to terminate compensation for wage loss and medical benefits for the reason that the weight of the medical evidence, as represented by the opinion of Dr. Buckingham, established that her injury-related residuals and disability had ceased.

By decision dated January 21, 2005, the Office made the proposed termination of wage-loss compensation final. The Office decision addressed the evidence and argument submitted in response to the Office's proposal to terminate benefits. The claimant disagreed with that decision and by letter postmarked February 18, 2005, Mr. Felser again requested an oral hearing.

The hearing was held on November 8, 2005, in Atlanta, Georgia. The claimant was present with Mr. Felser. The claimant's husband observed the hearing. The hearing transcript is of record details Mr. Felser's arguments that Dr. Buckingham was not a proper referee physician, his opinions lacked rationale, and that the evidence supported that the injury of September 27, 1999, caused or contributed to an aggravation of the claimant's pre-existing conditions.

Mr. Felser indicated that Dr. Buckingham had done fitness for duty examinations for the employing establishment. Mr. Felser noted he had again deposed Dr. Buckingham and would be submitting the deposition for the record. Dr. Buckingham's testimony in his deposition of October 28, 2005, which was submitted following the hearing, was affirmative that he had performed fitness for duty examinations for federal agencies in the past, including FLETC (a

division of the claimant's employing establishment). Dr. Buckingham was not asked if he presently performed such examinations on a regular basis, and it was not clarified as to what time period was referred to by "in the past." Dr. Buckingham additionally noted that such examinations were a very minor portion of what he had done and that most of the independent medical exams of fitness for duty type of examinations were done in the automobile liability area. Mr. Felser reiterated prior arguments relating to Dr. Buckingham's certifications

Mr. Felser noted that he would be submitting additional documentation from Dr. Deese, an original treating orthopaedic surgeon, who disagreed with the opinions of Dr. Buckingham. Mr. Felser indicated that Dr. Deese was of the opinion that the work injury caused a permanent exacerbation of a pre-existing condition. He noted that in Dr. Buckingham's second deposition testimony the doctor opined that the injury caused an exacerbation of the claimant's symptoms but no aggravation of the underlying condition.

Medical evidence in addition to Dr. Buckingham's deposition of October 28, 2005, was received following the hearing

An October 12, 2005, letter from J. Melvin Deese, Jr., M.D., a treating orthopaedic surgeon, noted that prior to the subject work injury the claimant had a previous medial meniscus repair and patella drilling for avascular necrosis in the 80s and 90s respectively. He indicated the claimant attained full recovery following those treatments and had no restrictions prior to the injury of September, 1999. Dr. Deese noted an April, 2000, MRI indicated that the posterior cruciate ligament (PCL) was torn but the anterior cruciate ligament (ACL) was intact. He noted the films had been destroyed. Dr. Deese stated the claimant had another MRI in April, 2004, that indicated the PCL was intact and the ACL was attenuated. Dr. Deese stated that after a review of the claimant's history, physical examination, and objective findings, it seemed within reasonable medical certainty that the claimant had a previously existing problem of her right knee prior to her injury in 1999. Dr. Deese noted that while he did not believe the record indicated that the fall was the direct cause of her knee problem, he did feel that it was reasonable that the injury aggravated the pre-existing condition and that the aggravation continued to contribute to the claimant's overall impairment as far as her physical limitations of limited stair climbing

A November 23, 2005, letter from Melvin L. Haysman, M.D., a treating allergy and immunology specialist, stated that Dr. Buckingham never contacted him regarding the claimant's case and condition. There is no requirement that a referee physician consult with any of the claimant's physicians for any reason

I have reviewed the evidence of record and find that the Office did not meet its burden of proof to terminate compensation as there remains an unresolved conflict in the medical evidence.

The Office may terminate or suspend compensation benefits only under certain specified circumstances: when a claimant refuses an offer of suitable employment; when the Office establishes that the disability for which compensation has been paid has ceased or is no longer causally related to the employment injury; when a claimant refuses to assign or prosecute an action in his own name as required by the Secretary under section 8131(b) of the Act; and under

section 8123 of the Act when a claimant fails to undergo or obstructs a scheduled medical examination ¹

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

When a case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical opinion evidence, the opinion of such specialist, if sufficiently well-rationalized and based on a proper medical background, must be given special weight ³. The Board has required exclusion of medical reports if the physician selected for referee examination is regularly involved in performing fitness for duty examinations for the claimant's employing agency. While such physicians may not be used as medical referees, they may be used as second opinion specialists ⁴

Where the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in medical opinion and the opinion requires further clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report. However, when the impartial medical specialist's statement of clarification or elaboration is not forthcoming to the Office, or if the physician is unable to clarify or elaborate on the original report, or if the physician's report is vague, speculative or lacks rationale, the Office must refer the employee to another impartial specialist for a rationalized medical opinion on the issue in question ⁵

The evidence is insufficient to establish that Dr. Buckingham cannot be considered as a referee physician as he is regularly involved in performing fitness for duty examinations for the claimant's employing agency for the reasons noted above.

The November 25, 2002, report of the second opinion specialist, Dr. Hein, noted that the claimant's current complaints of right knee pain appeared to be predominately the result of her osteonecrosis and degenerative changes which resulted from her previous meniscal injuries and subsequent surgical procedures. Dr. Hein also stated it was his impression that the myofascial pain syndrome that had been described may have been initiated by the claimant's injury, however ongoing symptoms of that severity were not likely to be the result of the described injury. Dr. Hein opined that the claimant had no residuals from the September 27, 1999, work injury. Dr. Hein was not specifically asked to provide an opinion as to whether the work injury caused or contributed to the diagnosed myofascial pain syndrome. He did not explain or provide medical reasoning in support of his opinions that the work injury "may have initiated" that condition and that the continuing symptoms did not likely result from the work injury.

¹ William C. Austin, 39 ECAB ___ (1988).

² Adina D. Blanco, 39 ECAB ___ (1988).

³ Louis G. Psyvas, 39 ECAB ___ (1987).

⁴ FECA Procedure Manual, 2-0810-13(a)(1).

⁵ Talmadge Miller, 47 ECAB 132 (1996).

Dr. Buckingham, the referee physician, was the first Office physician specifically asked to address the issue of whether or not the claimant had myofascial pain syndrome causally related to the work incident of September 27, 1999. Dr. Buckingham appeared to accept the claimant's diagnosis of myofascial pain syndrome. He cited the claimant's pain inventories and a depression index test and stated her pain complaints were most likely a manifestation of depression. He did not explain the reasons the work injury did not cause or contribute to the condition. Dr. Buckingham essentially functioned as a second opinion physician with respect to the issue of whether or not the accepted work incident caused or contributed to the claimant's myofascial pain syndrome. As noted, Dr. Hein, the second opinion specialist, was not specifically requested to render an opinion regarding a causal relationship between that condition and the work injury, although, as noted above, he did suggest that the work injury may have initiated that condition.

Dr. Buckingham's opinion otherwise remains insufficiently rationalized to resolve the conflict in the medical evidence or to merit special weight. The Office did not specifically ask Dr. Buckingham to provide reasoned explanation for the cause of the claimant's right knee instability or to address the issue of whether the claimant had a torn posterior cruciate ligament. Dr. Buckingham's supplemental report did not address those issues.

There now exists a conflict in the medical evidence between the claimant's treating physicians and Dr. Buckingham as to whether or not the claimant's myofascial pain syndrome was caused or contributed to by the work injury of September 27, 1999, and, if so, whether the claimant continues to have any related medical residuals or disability. The claimant's treating physical medicine and rehabilitation specialist, Joseph C. Hegarty, M.D., has opined that the claimant suffers from disabling myofascial pain syndrome causally related to the accepted work injury.

As noted, Dr. Buckingham did not provide sufficient clarifying rationale regarding the cause of the claimant's right knee instability or whether the claimant had a torn posterior cruciate ligament. Dr. Deese's letter of October 12, 2005, opined it was reasonable that the injury aggravated the claimant's pre-existing right knee condition and that the aggravation continued to contribute to the claimant's overall impairment as far as her physical limitations of limited stair climbing. The medical evidence has not completely addressed the issue of whether or not the work injury aggravated the claimant's pre-existing right knee condition.

On remand, the Office should refer the claimant, along with the case record, appropriate questions, and a statement of accepted facts, for an impartial medical examination by a Board-certified specialist to resolve the conflict of medical opinion as to whether or not the claimant's myofascial pain syndrome was caused or contributed to by the accepted work injury and whether or not the work injury aggravated the claimant's pre-existing right knee conditions. The referee physician should explain whether or not the claimant has any continuing medical residuals or disability related to any condition caused or contributed to by the September 27, 1999, work injury. The referee should provide full medical reasoning in support of his or her opinions.

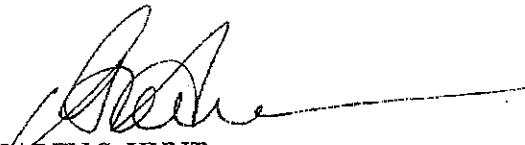
The Office should take actions as appropriate following any additional development deemed necessary after review of the specialist's report. As the Office improperly terminated the

claimant's wage-loss compensation and medical benefits the claimant is entitled to reinstatement of compensation pending resolution of the existing conflict of medical opinion.

Accordingly, the decision of the Office dated January 21, 2005, is hereby set aside and the case record is remanded to the district office for actions consistent with this decision.

DATED: JAN 25 2006

WASHINGTON, D.C.



KAREN S. HUNT
Hearing Representative
For
Director, Office of Workers'
Compensation Programs