

)	
M.A., Appellant)	
)	
and)	
)	
DEPARTMENT OF HOMELAND SECURITY,)	Docket No. 08-562
TRANSPORTATION SECURITY)	Issued: August 1, 2008
ADMINISTRATION, MIAMI)	
INTERNATIONAL AIRPORT, Miami, FL,)	
Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

On December 14, 2007 appellant filed a timely appeal from an April 24, 2007 decision of an Office of Workers' Compensation Programs' hearing representative affirming a June 27, 2006 decision terminating appellant's wage-loss benefits and denying continuing employment-related disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

The issues are: (1) whether the Office properly terminated appellant's wage-loss compensation benefits effective June 27, 2006 on the grounds that her disability due to her accepted condition had ceased; and (2) whether appellant established continuing disability and/or residuals on and after June 27, 2006 causally related to the accepted employment injury.

FACTUAL HISTORY

On December 8, 2004 appellant, a 31-year-old transportation security screener, filed an occupational disease claim alleging that on November 27, 2004 she first realized that her back condition was due to her employment duties. The Office accepted the claim for a cervical strain which was subsequently expanded to include lumbar strain and L5-S1 disc herniation. By letter dated February 24, 2005, it placed appellant on the periodic rolls for temporary total disability effective February 12, 2005.

On March 14 and April 25, 2005 Dr. Richard S. Glosser, a treating Board-certified orthopedic surgeon, noted that appellant was capable of working an eight-hour day with restrictions. Restrictions included sitting, standing and walking up to two hours; occasional lifting of up to 20 pounds; occasional carrying of up to 10 pounds; and occasional bending, squatting and crawling. On April 25, 2005 Dr. Glosser indicated that appellant was capable of returning to work with the restrictions he noted.

On May 23, 2005 Dr. Glosser reported appellant's movement was improving and "there does not appear to be appreciable lumbar tenderness. He indicated that appellant was to continue with her light-duty work.

Appellant stopped work on June 25, 2005 and has not returned. She filed claims for wage-loss compensation (Form CA-7) beginning June 25, 2005.

In a September 22, 2005 report, Dr. Philip R. Lozman, an Office referral physician and Board-certified orthopedic surgeon, opined that appellant was capable of performing her date-of-injury position and no longer had any residuals or disability due to her accepted employment injuries. A physical examination revealed normal extension, no acute distress, ability to bend over, negative bilateral straight leg raising and normal bilateral lower extremity motor strength. Dr. Lozman stated that there was no neurological or orthopedic findings supporting that appellant was totally disabled. In addition, he found appellant's subjective complaints or symptoms were "out of proportion to the objective findings on physical examination and MRI [magnetic resonance imaging] [scan] examination."

On October 28, 2005 the Office referred appellant along with a statement of accepted facts, and the medical record to Dr. Jeffrey T. Haimes, a Board-certified orthopedic surgeon, for an impartial medical evaluation to resolve the conflict in medical opinion as to whether appellant was capable of working full duty.

On December 1, 2005 Dr. Haimes noted appellant's history of injury and treatment, including her diagnostic test results. He diagnosed lumbosacral strain imposed on degenerative disc disease. Dr. Haimes indicated that she had complaints of pain in the base of her spine and left buttocks and numbness from her knees down. Appellant related that she sometimes felt pain in her right buttocks. A physical examination revealed tenderness bilaterally over the paraspinal lumbosacral musculature, coccyx and S1 joints. Dr. Haimes noted symmetrical reflexes and no objective evidence to weakness of appellant's bilateral extremities. He also found that "[s]ensation tests were not consistent with any dermatomal pattern that would correspond to the central protrusion at the L5-S1 level, and therefore were not objective." Dr. Haimes opined that

appellant's subjective complaints were not supported by the objective evidence. He indicated that appellant was capable of working an eight-hour day with restrictions. The restrictions included sitting up to four hours per day; walking and standing up to two hours per day; pushing and pulling up to 40 pounds for two hours per day; kneeling for up to one-half hour; no lifting more than 20 pounds; and up to 10 pounds of intermittent carrying. In concluding, Dr. Haimes opined that appellant continues to have subjective residuals due to the November 27, 2004 employment injury, but no objective residuals and that "[h]er subjective complaints are out of proportion to her objective findings." He also noted that the work restrictions he noted were not "specifically due to her work injury of [November] 27, [20]04."

On February 6, 2006 the Office proposed to terminate appellant's wage-loss benefits. The Office determined that her injury-related disability had ceased.

In response appellant submitted reports dated February 15, 2006 report by Dr. Glosser who noted he took exception to Dr. Haimes' report. Dr. Glosser disagreed with Dr. Haimes' conclusion that appellant had a preexisting spinal disorder as there was no history to support this conclusion. He opined that appellant's "injury was work related" and that while "she has made a decent recovery, but not a full recovery and once again is able to work at lighter duty with restrictions" previously determined. A physical examination revealed normal gait, some lumbosacral tenderness on flexion and intact reflexes.

By decision dated June 27, 2006, the Office terminated appellant's wage-loss benefits effective that date on the grounds that her injury-related disability had ceased.

On June 29, 2006 appellant requested an oral hearing, which was held on February 28, 2007.

On January 15, 2007 Dr. Glosser stated that he had not seen appellant in about a year and she indicated that she had not seen any other physician during that period. A physical examination revealed 40 degrees flexion at the waist, no overt spasm and lumbar tenderness upon palpation. Dr. Glosser opined that appellant was capable of working regular duty and "although there are some findings on MRI [scan], they were not overly dramatic."

In a February 26, 2007 report, Dr. Glosser noted that appellant was currently not working and she stated the employing establishment had not offered her any work even though she had been released to regular duty. A physical examination revealed a slower gait pattern on ambulation, some lumbar tenderness on palpitation, no spasm, low back pain complaints on bilateral hip roll and straight leg raising tests, slightly diminished ankle reflexes and intact patellar reflexes.

By decision dated April 24, 2007, the Office hearing representative found that the evidence established that appellant sustained a recurrence of total disability for the period June 25, 2005 to June 25, 2006. Next, the hearing representative affirmed the June 26, 2006 termination of wage-loss compensation and found the evidence insufficient to establishment entitlement to wage-loss compensation on and after June 26, 2006.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹ Having determined that an employee has a disability causally related to his 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.² The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.³

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee the Secretary shall appoint a third physician who shall make an examination.⁴ It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁵

ANALYSIS -- ISSUE 1

The Office found that a conflict of medical opinion existed based on the opinions of Dr. Glosser and Dr. Lozman as to the nature and extent of appellant's residual disability. Therefore, the Office properly referred appellant to an impartial medical examiner. Dr. Haimen, the impartial medical specialist, diagnosed lumbosacral strain imposed on degenerative disc disease. He stated that appellant did not have any disability due to her accepted employment injury and was capable of working with restrictions and that the work restrictions were not attributable to the employment-related injury. The physician opined that appellant continued to have subjective complaints due to her November 27, 2004 employment injury, but there were no supporting objective findings for these complaints.

In February 15, 2006 report, Dr. Glosser noted his disagreement with Dr. Haimen's opinion that appellant had a preexisting spinal condition and that her spinal condition was employment related. He also noted appellant had not made a full recovery yet. Subsequently submitted reports from a physician who was on one side of a resolved conflict of medical opinion are generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.⁶

¹ *T.F.*, 58 ECAB ____ (Docket No. 06-1186, issued October 19, 2006); *George A. Rodriguez*, 57 ECAB 224 (2005).

² *J.M.*, 58 ECAB ____ (Docket No. 06-661, issued April 25, 2007); *Elaine Sneed*, 56 ECAB 373 (2005).

³ *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Furman G. Peake*, 41 ECAB 361 (1990).

⁴ *F.R.*, 58 ECAB ____ (Docket No. 05-15, issued July 10, 2007); *Regina T. Pellecchia*, 53 ECAB 155 (2001).

⁵ *J.M.*, *supra* note 2.

⁶ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Richael O Brien*, 53 ECAB 234, 242 n.6 (2001).

The Board finds that the Office properly relied on the impartial medical examiner's December 1, 2005 report in determining that appellant was no longer disabled as a result of her November 27, 2004 employment injury. Dr. Haimes' opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed her medical records. Dr. Haimes also reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to the impartial medical examiner's findings.⁷ As the weight of the medical evidence establishes that appellant was no longer disabled due to her accepted employment injuries, the Office properly terminated appellant's wage-loss compensation.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant.⁸ In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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 appellant's diagnosed condition and the implicated employment factors.⁹ The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.¹⁰

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any continuing disability due to her accepted cervical strain, lumbar strain and L5-S1 disc herniation on or after June 27, 2006.

Following the Office's June 26, 2006 decision terminating her wage-loss benefits, appellant submitted additional reports by Dr. Glosser. However, Dr. Glosser's reports do not support that appellant had continuing disability due to her accepted work injuries. Rather, he

⁷ *R.H.*, 59 ECAB ____ (Docket No. 07-2124, issued March 7, 2008); *Gary R. Sieber*, 46 ECAB 215 (1994) (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 See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

⁹ *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹⁰ *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

stated that appellant was capable of performing her regular work. Therefore, these reports are insufficient to meet appellant's burden of proof.

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion concluding she was totally disabled from working due to her accepted employment injuries.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss benefits on the grounds that she no longer had any disability due to her accepted employment injury. The Board further finds that appellant did not meet her burden of proof in establishing a continuing work-related disability on and after the termination of his compensation benefits on June 26, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 24, 2007 is affirmed.

Issued: August 1, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board