

The issues are: (1) whether the Office met its burden of proof to terminate appellant's wage-loss compensation on the basis that she no longer had any disability or residuals due to her accepted cervical injuries and right knee condition; (2) whether the Office met its burden of proof in terminating medical compensation benefits for the cervical condition; and (3) whether appellant established that she was totally disabled on and after September 28, 2007 causally related to the July 19, 2006 employment injury.

FACTUAL HISTORY

This case has previously been before the Board. On December 20, 2006 the Board issued an order reversing the Office's February 21, 2006 decision terminating appellant's compensation benefits.¹ The Board found that the Office properly found a conflict in the medical opinion evidence between Dr. F. Alex Leon, a treating physician, and Dr. Robert F. Draper, Jr., a second opinion physician, as to whether appellant is capable of returning to her date-of-injury position with no restrictions and whether her accepted conditions have resolved. However, the Board found the opinion of Dr. Michael A. Proctor, a physician specializing in orthopedic surgery, was insufficient to resolve the conflict in the medical opinion evidence as he was not Board-certified.²

On February 13, 2007 the Office referred appellant to Dr. Alan G. Schreiber, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence. In a February 27, 2007 report, Dr. Schreiber diagnosed C5-6 and C6-7 and L5-S1 degenerative disc disease with chronic lumbar low back pain, status post right knee meniscus arthroscopic surgery and right knee chondromalacia and patellofemoral pain. A physical examination revealed normal upper and lower extremity sensory and motor functions. Dr. Schreiber opined that appellant no longer has any residuals due to her accepted lumbar and cervical strains. He found that appellant was capable of performing her job duties as they were sedentary in nature. Dr. Schreiber also stated that appellant "suffers from a further work-related aggravation of her underlying degenerative disc disease," but that her pain due to this condition was not employment related. With respect to her right knee, he concluded that appellant had reached maximum medical improvement and that she "may continue to complain of some patellofemoral pain."

On April 16, 2007 the Office received a revised February 27, 2007 report and Dr. Schreiber's response to questions posed by the Office in a March 21, 2007 letter requesting clarification. Dr. Schreiber noted that his February 27, 2007 report contained a typo with respect to the sentence regarding aggravation of appellant's degenerative disc disease. He deleted the sentence regarding a work-related aggravation of appellant's underlying degenerative disc disease. Dr. Schreiber also indicated that appellant was capable of working eight hours per day and driving to work.

¹ Docket No. 06-822 (issued December 20, 2006).

² The Office accepted that appellant, then a 44-year-old claims examiner, sustained a cervical strain and left shoulder strain as a result of lifting two heavy cases on July 19, 1999. On September 3, 2000 appellant filed a traumatic injury claim alleging she injured both wrists, her left hip, left ankle and lower back when her shoe heel got caught in the carpet and she fell, which was accepted for lumbar and left hip sprain. The Office subsequently accepted a left ankle sprain and cervical strain. It accepted that appellant sustained bilateral knee contusions on May 19, 2003 when her foot got caught in an electrical cord and she fell. The Office expanded this claim to include the conditions of right medial meniscus tear and aggravation of cervical and lumbar degenerative disc disease.

On May 10, 2007 the Office issued a proposed notice of termination of benefits based on Dr. Schreiber's opinion that she no longer had residuals due to her accepted cervical condition.³

By decision dated September 28, 2007, the Office terminated appellant's wage-loss compensation for her accepted conditions cervical strain, aggravation of preexisting cervical disc disease and right knee condition effective that day. Medical benefits for treatment of her cervical condition were terminated effective August 28, 2007. The Office noted that appellant's medical benefits remained open for treatment of her right knee condition.

On November 6, 2007 appellant requested reconsideration. She submitted an October 12, 2007 report by Dr. Leon who opined that appellant continued to have residuals of her July 19, 1999 employment-related neck injuries. Dr. Leon disagreed with the opinion of Dr. Schreiber, noting that Dr. Schreiber's report contained "several inconsistencies and errors" which made reliance on the report questionable. He contended that Dr. Schreiber "disregarded the objective evidence of cervical disc lesions found by Dr. Thompson on positive discographies at C5-6 and C6-7, done in 2004" and did not have access to the full medical records pertinent to this issue.

Appellant filed an appeal with the Board on October 9, 2007. On October 24, 2007 the Board granted appellant's request to dismiss her appeal.⁴

By decision dated January 14, 2008, the Office denied modification of its September 28, 2007 decision.⁵

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁶ After it has determined that an employee has disability causally related to 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.⁷ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must

³ On April 25, 2007 the Office informed appellant that it was treating her January 26, 2007 recurrence claim as a new injury and assigned it claim number xxxxxx188. The hearing representative noted the claim had been accepted for a hip and thigh strain.

⁴ Docket No. 08-12 (issued October 24, 2007).

⁵ The Board notes that, following the January 14, 2008 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. See 20 C.F.R. § 501.2(c); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

⁶ *Paul L. Stewart*, 54 ECAB 824 (2003).

⁷ *Elsie L. Price*, 54 ECAB 734 (2003).

⁸ See *Del K. Rykert*, 40 ECAB 284 (1988).

establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁹

Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part: "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."¹⁰ Where 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.¹¹

ANALYSIS -- ISSUE 1

The Office accepted appellant's claims for cervical strain, lumbar sprain, left hip sprain, left ankle sprain, left shoulder strain, bilateral knee contusions, right medical meniscus tear and aggravation of cervical and lumbar degenerative disc disease. The issue to be determined is whether the Office has met its burden of proof to establish that appellant had no remaining disability or residuals related to her accepted cervical injuries and right knee injury.

The Office properly found a conflict of medical opinion evidence between Dr. Leon, appellant's treating physician, and Dr. Draper, an Office referral physician, as to whether appellant is capable of returning to her date-of-injury position with no restrictions and whether her accepted conditions have resolved and referred him to an impartial medical examiner to resolve the conflict.

On February 27, 2007 Dr. Schreiber, a Board-certified orthopedic surgeon, conducted a physical examination and review of appellant's medical history. He diagnosed C5-6 and C6-7 and L5-S1 degenerative disc disease with chronic lumbar low back pain, status post right knee meniscus arthroscopic surgery and right knee chondromalacia and patellofemoral pain. A physical examination revealed normal upper and lower extremity sensory and motor functions. Dr. Schreiber opined that appellant no longer had any residuals due to her accepted lumbar and cervical strains. Next, he concluded that appellant was capable of performing her job duties as they were sedentary in nature. Dr. Schreiber also opined that appellant "suffers from a further work-related aggravation of her underlying degenerative disc disease," but that her pain due to this condition was not employment related. With respect to her right knee, he concluded that appellant had reached maximum medical improvement and that she "may continue to complain of some patellofemoral pain." In response to questions posed by the Office in a March 21, 2007 letter requesting clarification, Dr. Schreiber noted in his supplemental report that his February 27, 2007 report contained a typo with respect to the sentence regarding aggravation of appellant's degenerative disc disease. He also indicated that appellant was capable of working eight hours per day and driving to work. In a revised February 27, 2007 report, Dr. Schreiber

⁹ *James F. Weikel*, 54 ECAB 660 (2003).

¹⁰ 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

¹¹ *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

deleted the sentence in which he opined that appellant's preexisting lumbar and cervical degenerative disc disease had been aggravated by her employment.

The Board finds that the opinion of Dr. Schreiber is not entitled to the special weight of the medical opinion evidence because it was not sufficiently rationalized. Dr. Schreiber found that appellant's lumbar and cervical strains had resolved and that appellant no longer had any residuals due to her accepted employment injuries. The Board has held that medical opinion that is not fortified by rationale is of diminished probative value.¹² Dr. Schreiber gave no medical explanation for his conclusion that appellant's accepted lumbar and cervical conditions had fully resolved. Although he provided clinical findings in his report, he did not discuss them in his analysis and did not explain how they formed the basis for his conclusion. The Board notes that the Office attempted to obtain clarification from Dr. Schreiber regarding whether appellant's May 19, 2003 employment injury had aggravated her preexisting lumbar and cervical degenerative disc conditions. Dr. Schreiber stated that his initial report contained a typographical error. He resubmitted his February 27, 2007 report on April 16, 2007 with the sentence regarding an employment aggravation of her preexisting degenerative disc disease removed. While Dr. Schreiber noted the inclusion of an employment-related aggravation of appellant's preexisting cervical and lumbar degenerative disc disease in response to the Office's request for clarification, he failed to provide any explanation for his change in opinion or present any medical rationale explaining how or why appellant's employment injury had not aggravated her preexisting degenerative disc disease.¹³ Therefore, his opinion is of diminished probative value as it contains insufficient medical rationale explaining the change in his opinion other than noting his original report contained a typographical error.

Moreover, Dr. Schreiber's revised opinion is not in keeping with the statement of accepted facts. The Office provided Dr. Schreiber with a statement of accepted facts to use as a frame of reference in forming his opinion. The statement of accepted facts made clear that the Office had accepted appellant's May 19, 2003 claim for aggravation of her cervical and lumbar degenerative disc disease. As a medical professional, Dr. Schreiber is entitled to reject such an aggravation, but if he does so without convincing medical rationale, his opinion has little probative or evidentiary value. The Office's procedure manual states that, when the impartial medical specialist does not use the statement of accepted facts as the framework in forming his or her opinion, the probative value of the opinion is diminished or negated altogether.¹⁴ For these reasons, the Board finds the Office improperly relied on the opinion of Dr. Schreiber to establish that appellant had no remaining disability or residuals from her accepted employment injuries.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation because the report of the impartial medical examiner was not sufficiently rationalized to resolve the conflict of medical opinion.

¹² *Cecilia M. Corley*, 56 ECAB 662 (2005).

¹³ *Robert Broome*, 55 ECAB 339 (2004).

¹⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3(10) (October 1990); see *Willa M. Frazier*, 55 ECAB 379 (2004) (finding that the report of the impartial medical specialist could not be used to resolve the conflict at issue because it deviated from the statement of accepted facts).

CONCLUSION

The Board finds that the Office has not met its burden of proof and improperly terminated appellant's compensation benefits.¹⁵

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 14, 2008 and September 28, 2007 are reversed.

Issued: January 7, 2009
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

¹⁵ In light of the Board's findings on the first issue, the remaining issues are moot.