

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

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M.B., Appellant)	
)	
and)	Docket No. 09-567
)	Issued: November 12, 2009
U.S. POSTAL SERVICE, POST OFFICE,)	
Ranch Cucamonga, CA, Employer)	
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Appearances:
Wild Chang, Esq., for the appellant
No appearance, for the Director

Oral Argument June 2, 2009

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 23, 2008 appellant, through counsel, filed a timely appeal from a September 22, 2008 decision of the Office of Workers' Compensation Programs' terminating her compensation and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's medical and compensation benefits effective November 21, 2003; (2) whether appellant had any continuing disability or residuals after November 21, 2003 due to her accepted conditions; and (3) whether appellant sustained an emotional or psychological condition as a consequence of her accepted injury.

FACTUAL HISTORY

Appellant, a 48-year-old customer service supervisor, sustained an injury on July 17, 2002, when she fell from a four-foot high dock at work. The Office accepted her traumatic injury claim for cervical, thoracic and lumbar strains; left wrist and bilateral knee strains; and right hip and head contusions.¹ Appellant was treated by Dr. Lauri B. Hemsley, Board-certified in the field of occupational medicine, who opined that she continued to experience residuals from her accepted conditions. On December 12, 2002 Dr. Hemsley stated that appellant had experienced an increase in pain due to stress on the job. All magnetic resonance imaging (MRI) scans and x-rays were within normal limits. Dr. Hemsley opined that appellant could return to full-time employment, provided that she was restricted from making forceful left hand motions and that she could sit and stand at will.

The Office referred appellant, together with a statement of accepted facts and the entire medical record, to Dr. Bunsri T. Sophon, an orthopedic surgeon, for a second opinion examination. It asked Dr. Sophon to render an opinion as to whether appellant continued to experience residuals from her accepted injury and, if so, whether she was disabled as a result of those residuals. In a report dated December 26, 2002, Dr. Sophon provided a history of injury and treatment, a review of the medical records and examination findings. His examination of the cervical spine revealed full range of motion (ROM); normal curvature; no deformity, swelling, inflammation or tenderness; no evidence of atrophy or spasm; and no palpable masses. Dr. Sophon found full ROM of both wrists, with no swelling, tenderness or palpable masses. Examination of the knees revealed no evidence of joint effusion, ligamentous instability, deformity, tenderness or swelling. Extension was zero degrees bilaterally and flexion was 130/150 degrees. The neurological examination was grossly within normal limits, with normal sensation and reflexes (2+) bilaterally. In summary, Dr. Sophon stated that there were no abnormal objective findings to support appellant's subjective complaints of pain in her neck, low back, right thigh, left knee and left wrist. He opined that she had no residuals and no physical limitations from her accepted conditions and that she required no further medical treatment. In a supplemental report dated February 18, 2003, Dr. Sophon opined that appellant's total disability had ceased on December 16, 2002, when she returned to work.

The record contains a January 14, 2003 report from Dr. Herman R. Schoene, a Board-certified orthopedic surgeon, who diagnosed bilateral wrist sprain. His examination revealed good ROM, no deformity and no pain on motion. Dr. Schoene stated that x-rays were entirely normal.

In a January 14, 2003 report, Dr. Hemsley stated that appellant's MRI scans and x-rays were normal. Noting that appellant had consistently shown mild tenderness over the left wrist and across the back, with radiculopathy or loss of ROM, she indicated that appellant had been placed "off work" based on subjective complaints of pain. On December 30, 2002 Dr. Hemsley stated that appellant had been "out of work due to stress."

¹ Appellant's December 9, 2003 traumatic injury claim for injuries allegedly sustained to her neck, back, spine, legs and knees on November 24, 2003 was denied by decisions dated February 4, 2004, May 24, 2006 and June 5, 2007. In a decision dated July 17, 2009, the Board affirmed the Office's June 24, 2008 decision denying appellant's request for merit review. Docket No. 09-15 (issued July 17, 2009).

In a “Final Comprehensive Report” dated February 25, 2003, Dr. Hemsley stated that there were “no true findings of disability on examination. She found full ROM in the shoulders, wrists, elbows and torso; generalized full strength of the upper and lower extremities; decreased sensation of the left hand, which was inconsistent with nerve root or dermatomal findings; normal grip strength bilaterally; even hips and straight spine; negative Spurling’s and Fabere’s; no tenderness over the left wrist snuff box; and no swelling, but some dorsal wrist tenderness. Dr. Hemsley opined that appellant’s subjective complaints outweighed objective findings. She indicated that “there may be some emotional overlay as well as stress-related overlay to her symptoms. Therefore, her subjective complaints are exaggerated.”

On October 21, 2003 the Office proposed to terminate all compensation benefits based on Dr. Sophon’s comprehensive, thorough and well-reasoned second opinion report, which constituted the weight of the medical evidence. By decision dated November 21, 2003, it finalized its termination of benefits. The Office also found that appellant had not sustained an emotional or psychological condition as a consequence of her accepted work injuries.²

On November 20, 2004 appellant requested reconsideration. In support of her request, she submitted a February 12, 2004 report from Dr. William Simpson, a treating physician, who opined that she continued to experience residuals and was totally disabled as a result of her accepted injuries. Dr. Simpson diagnosed superimposed chronic cervical and lumbar musculoligamentous sprains; cervical and lumbar disc herniations; internal derangement of the left knee; right sciatica; and right hip sprain. He opined that appellant’s conditions were causally related to her accepted July 17, 2002 injury and that she was temporarily totally disabled.

In a February 9, 2004 report, Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, provided examination findings, which he opined were consistent with degenerative arthritis of the right hip. He found limited ROM of the cervical and lumbar spines and markedly positive Tinels signs at the wrists. Dr. Tauber also found limited ROM of the right hip and a positive straight leg raise test on the right. He stated that appellant’s complaints appeared to be related to her industrial injuries and her repetitive motion duties during the course of her employment.

Appellant submitted a report dated May 27, 2003, from Dr. Othelia Ann Jurani, a treating physician, who stated that she had been treating appellant since December 2002 for stress and anxiety related to pain occurring due to a July 2002 work-related injury. On May 29, 2003 Robert Perez, a licensed clinical social worker, stated that he had been treating her since December 12, 2002 for an acute stress disorder brought on by anxiety and depression related to a physical injury at work. On July 2, 2003 Dr. H. Douglas Faber, a treating physician, diagnosed acute stress disorder, which “appears to be originated/precipitated by the injuries at work on July 17, 2002.”

By decision dated February 1, 2005, the Office denied modification of its November 21, 2003 termination decision. On January 31, 2006 appellant again requested reconsideration.

² The record reflects that appellant has filed a separate emotional condition claim (File No. xxxxxx715) alleging that treatment by individuals at the employing establishment and pain from her orthopedic injuries in the instant claim are responsible for her stress condition.

In a January 24, 2005 report, Dr. Simpson opined that appellant required additional medical care and was temporarily totally disabled until March 10, 2005. He diagnosed chronic cervical musculoligamentous sprain; bilateral carpal tunnel syndrome (CTS); bilateral knee internal derangement; sciatica of the right hip; and mental stress and depression. On April 8, 2005 Dr. Simpson again opined that appellant was temporarily totally disabled. He found limited ROM in the left knee and decreased sensation in the medial nerve distribution in both hands.

On July 12, 2005 Dr. Simpson disagreed with Dr. Sophon's opinion that appellant had no residuals from her accepted injury. He noted objective findings, including limited ROM in the thoracic and lumbar spines; tenderness in both joint lines; positive McManus sign; decreased motion in the right knee; positive electromyogram and nerve conduction study (EMG/NCS) reflecting evidence of CTS; and decreased ROM with bilateral thenar space atrophy. Dr. Simpson expressed his agreement with Dr. Tauber's February 9, 2004 report.

In a decision dated April 7, 2006, the Office denied modification of its previous decisions, finding that the weight of the medical evidence remained with Dr. Sophon. On April 6, 2007 appellant again requested reconsideration.

In a January 5, 2007 report, Dr. Simpson opined that all of appellant's residual objective findings were a direct result of injuries sustained on July 17, 2002.

The Office found a conflict in medical opinion between appellant's treating physicians and the second opinion physician. It referred her to Dr. Satish K. Lal, a Board-certified orthopedic surgeon, for an impartial medical examination.³ In a July 7, 2008 report, Dr. Lal stated that his evaluation and review of the medical records was focused only on persistent pain and stiffness in appellant's lower back, radicular symptoms of numbness in her lower limbs and pain and stiffness in her right hip. His examination revealed continued restricted ROM of the lumbar spine; positive straight leg raises in both legs; decreased sensation to pinprick; and pain and restricted ROM in the right hip. A report of an EMG/NCS showed possible right lumbosacral radiculopathy. Dr. Lal diagnosed degenerative disc disease and herniated disc at L4-5; degenerative arthritis of the right hip; lumbosacral muscle sprain; right hip sprain; and lumbar radiculopathy. He recommended an x-ray of the right hip and an MRI scan of the lumbar spine to assess her current status. Dr. Lal also recommended temporary total disability until the studies were performed.

In an August 11, 2008 letter, the Office asked Dr. Lal to clarify his July 11, 2008 report, stating that he had failed to fully answer the questions presented to him prior to his examination of appellant. It asked him to provide a supplemental report after receiving the results of

³ The Board notes that the Office initially referred appellant to Dr. Ahmad Hajj, a Board-certified orthopedic surgeon. Although Dr. Hajj performed an examination of appellant, he failed to provide a report to the Office. Accordingly, the Office referred appellant to Dr. Lal on March 11, 2008. The record contains a copy of a medical conflict statement and questions to the referee physician, which were forwarded to Dr. Hajj on April 20, 2007. However, the record does not contain a copy of the medical conflict statement or questions to the referee physician which were sent to Dr. Lal.

prescribed radiological studies and noted that a copy of the questions presented was enclosed with the letter.⁴

After reviewing the results of new x-rays and MRI scan studies, Dr. Lal provided a supplemental report dated August 27, 2008. He diagnosed mild degenerative arthritis of the right hip and degenerative bulging disc at L3-4, L4-5 and L5-S1, with facet joint arthritis. Dr. Lal opined that appellant's July 17, 2002 work-related injury did not cause the degenerative arthritic changes in the right hip, but that the symptoms of pain in her lower back, hip and lower limb were caused by the accepted July 17, 2002 injury. In light of appellant's persistent symptoms of back pain and intermittent radiation of pain over both lower limbs, he recommended a series of epidural steroidal injections. Dr. Lal indicated that her condition was not permanent and stationary and recommended restrictions which precluded bending and stooping, pulling, pushing, lifting or carrying heavy objects and climbing ladders.

By decision dated September 22, 2008, the Office modified its previous decisions terminating appellant's medical and compensation benefits. It expanded her July 17, 2002 claim to accept an aggravation of degenerative arthritis of the lumbar spine and mild disc bulging. However, the Office found that the medical evidence did not establish ongoing residuals relative to any other body part.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 establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁹

⁴ The record does not contain a copy of the questions presented.

⁵ Appellant submitted additional evidence after the Office's September 22, 2008 decision; however, the Board cannot consider such evidence for the first time on appeal. The Board's review of a case shall be limited to the evidence in the case record which was before the Office at the time of its final decision. 20 C.F.R. § 10.501.2(c) (2007).

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).

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

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation and medical benefits effective November 21, 2003.

Prior to the November 21, 2003 termination decision, the medical evidence of record consisted primarily of reports from appellant's treating physician, Dr. Hemsley, who provided essentially normal examination findings. On January 14, 2003 noting that MRI scans and x-rays were normal, she stated that appellant had been placed "off work" based on subjective complaints of pain. In a "Final Comprehensive Report" dated February 25, 2003, Dr. Hemsley stated that there were "no true findings of disability on examination. She found full ROM in the shoulders, wrists, elbows and torso; generalized full strength of the upper and lower extremities; decreased sensation of the left hand, which was inconsistent with nerve root or dermatomal findings; normal grip strength bilaterally; even hips and straight spine; negative Spurling's and Fabere's; no tenderness over the left wrist snuff box; and no swelling, but some dorsal wrist tenderness. Dr. Hemsley opined that appellant's subjective complaints, which were exaggerated, outweighed objective findings.

Dr. Schoene's January 14, 2003 report provided no objective evidence of disability or residuals relating to appellant's wrist condition. His examination revealed good ROM, no deformity and no pain on motion and x-rays were entirely normal.

The Office's second opinion physician, Dr. Sophon, reviewed the entire record and statement of accepted facts and performed a thorough examination of appellant. In his December 26, 2002 report, he opined that she was not disabled as a result of her accepted conditions and found no objective evidence of residuals directly attributable to her July 17, 2002 work injury. Dr. Sophon's examination of the cervical spine revealed full ROM; normal curvature; no deformity, swelling, inflammation or tenderness; no evidence of atrophy or spasm; and no palpable masses. He found full ROM of both wrists, with no swelling, tenderness or palpable masses. Examination of the knees revealed no evidence of joint effusion, ligamentous instability, deformity, tenderness or swelling. Extension was zero degrees bilaterally and flexion was 130/150 degrees. The neurological examination was grossly within normal limits, with normal sensation and reflexes (2+) bilaterally. In summary, Dr. Sophon indicated that there were no abnormal objective findings to support appellant's subjective complaints of pain in her neck, low back, right thigh, left knee and left wrist. He opined that she had no physical limitations due to her accepted conditions and that she required no further medical treatment. The Board finds that the Dr. Sophon's well-rationalized report, which was based upon a proper factual and medical background, represents the weight of the medical evidence and establishes that appellant was no longer disabled and had no residuals from her accepted injury as of November 21, 2003.

Appellant did not submit any rationalized medical evidence to overcome the weight of Dr. Sophon's opinion or to create a conflict. Rather, reports from her treating physicians reflect no objective findings to support her subjective complaints. The weight of the medical evidence establishes that appellant was no longer disabled as a result of her accepted conditions and had no injury-related residuals.

LEGAL PRECEDENT -- ISSUE 2

Following the proper termination of benefits, the claimant has the burden to establish continuing employment-related residuals and/or disability with probative medical evidence.¹⁰ The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated 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.¹¹

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."¹² 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.¹³

In a situation where the Office secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.¹⁴ If the impartial medical specialist is unable to clarify or elaborate on his original report or if his supplemental report is also vague, speculative or lacking in rationale, the Office must submit the case record and a detailed statement of accepted facts to a second impartial specialist for the purpose of obtaining his rationalized medical opinion on the issue.¹⁵

¹⁰ See *Talmadge Miller*, 47 ECAB 673 (1996).

¹¹ *Joe L. Wilkerson*, 47 ECAB 604 (1996); *Alberta S. Williamson*, 47 ECAB 569 (1996).

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

¹³ *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

¹⁴ *L.R. (E.R.)*, 58 ECAB ____ (Docket No. 06-1942, issued February 20, 2007); *Phillip H. Conte*, 56 ECAB 213 (2004); *Guiseppe Aversa*, 55 ECAB 164 (2003).

¹⁵ *Nancy Keenan*, 56 ECAB 687 (2005); *Talmadge Miller*, *supra* note 10; *Harold Travis*, 30 ECAB 1071 (1979); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810(11)(c)(1)-(2) (April 1993).

ANALYSIS -- ISSUE 2

The Board finds that this case is not in posture for a decision as to whether appellant had any continuing disability or residuals due to her accepted injury after November 21, 2003. Therefore, the case will be remanded to the Office for further development of the medical evidence.

Once the Office properly terminated appellant's compensation and medical benefits, she had the burden to establish continuing residuals and/or disability due to her accepted injury with probative medical evidence.¹⁶ It determined that a conflict of medical opinion existed regarding the nature and extent of any continuing residuals from appellant's accepted conditions, based on the opinions of Dr. Simpson and Dr. Sophon, and referred appellant to Dr. Lal for an impartial medical examination. The Board finds that there was no conflict in medical opinion as to whether appellant had continuing residuals or disability at the time the Office referred appellant to Dr. Lal in 2008. Therefore, Dr. Lal's July 7, 2008 report is not entitled to the special weight reserved for an impartial medical specialist.

As noted above, the Act provides for the appointment of an impartial medical examiner, whose opinion shall be accorded special weight, "if there is disagreement between the physician making the examination for the United States and the physician of the employee."¹⁷ In the instant case, at the time the Office referred appellant to Dr. Lal, there was no medical report of record from an Office physician which even addressed the issue of continuing residuals or disability after the date of termination. Dr. Sophon's December 26, 2002 report, by virtue of its date, does not constitute substantial evidence of appellant's disability or continuing residuals after November 21, 2003 and is insufficient to create a conflict on that issue. Therefore, Dr. Lal's July 7, 2008 report is entitled only to the weight of a second opinion report.

Appellant's treating physicians opined that she was disabled as a result of continuing injury-related residuals. On February 9, 2004 Dr. Tauber provided examination findings, which he opined were consistent with degenerative arthritis of the right hip. He found limited ROM of the cervical and lumbar spines and markedly positive Tinels signs at the wrists. Dr. Tauber also found limited ROM of the right hip and a positive straight leg raise test on the right. He stated that appellant's complaints appeared to be related to her industrial injuries and her repetitive motion duties during the course of her employment. Dr. Tauber's report did not provide detailed examination findings or explain how her current condition was causally related to accepted injury; however, his report supports continuing work-related residuals and disability.

On February 12, 2004 Dr. Simpson diagnosed superimposed chronic cervical and lumbar musculoligamentous sprains; cervical and lumbar disc herniations; internal derangement of the left knee; right sciatica; and right hip sprain and opined that her conditions were causally related to the July 17, 2002 injury. On January 24, 2005 he opined that appellant required additional medical care and was temporarily totally disabled until March 10, 2005. Dr. Simpson diagnosed

¹⁶ See *Talmdage Miller*, *supra* note 10.

¹⁷ 5 U.S.C. § 8123(a); see *Raymond A. Fondots*, *supra* note 12; *Rita Lusignan (Henry Lusignan)*, *supra* note 12. See also *Sharyn D. Bannick*, *supra* note 13.

chronic cervical musculoligamentous sprain; bilateral CTS; bilateral knee internal derangement; sciatica of the right hip; and mental stress and depression. On April 8, 2005 he found limited ROM in the left knee and decreased sensation in the medial nerve distribution in both hands and again opined that appellant was temporarily totally disabled. On July 12, 2005 Dr. Simpson disagreed with Dr. Sophon's opinion that appellant had no residuals from her accepted injury. He noted objective findings, including limited ROM in the thoracic and lumbar spines; tenderness in both joint lines; positive McManus sign; decreased motion in the right knee; positive EMG/NCS reflecting evidence of CTS; and decreased ROM with bilateral thenar space atrophy. In a January 5, 2007 report, Dr. Simpson opined that all of appellant's residual objective findings were a direct result of injuries sustained on July 17, 2002. None of Dr. Simpson's reports contain a fully rationalized explanation as to how appellant's diagnosed conditions are causally related to the July 17, 2002 incident. However, the reports provide detailed objective findings and consistently reflect a reasoned opinion that her conditions are due to the accepted injury.

The Office referred appellant to Dr. Lal for an opinion as to whether she had residuals or disability related to her accepted injury. However, Dr. Lal's reports are unclear and do not provide a rationalized opinion on the issue which he was asked to address. His July 7, 2008 report did not consider the totality of appellant's accepted conditions, which included cervical, thoracic and lumbar strains; left wrist and bilateral knee strains; and right hip and head contusions. Dr. Lal diagnosed degenerative disc disease and herniated disc at L4-5; degenerative arthritis of the right hip; lumbosacral muscle sprain; right hip sprain; and lumbar radiculopathy and recommended temporary total disability until radiographic studies were performed. However, he did not provide an opinion as to whether appellant's condition was causally related to her accepted injury. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹⁸ In his August 27, 2008 supplemental report, Dr. Lal diagnosed mild degenerative arthritis of the right hip and degenerative bulging disc at L3-4, L4-5 and L5-S1, with facet joint arthritis. He opined, without explanation, that appellant's July 17, 2002 work-related injury did not cause the degenerative arthritic changes in the right hip, but that the symptoms of pain in her lower back, hip and lower limb were caused by the accepted injury. The Board is unable to determine from Dr. Lal's statement whether he believes appellant's condition was a continuation or an exacerbation, of her preexisting condition. He failed to offer any medical reasoning in support of his conclusion.¹⁹ The Board has held that a medical opinion that is not fortified by rationale is of diminished probative value.²⁰

The Board notes that the Office properly requested clarification of Dr. Lal's July 7, 2008 report, in light of the fact that he failed to fully answer the questions presented to him by the Office.²¹ As Dr. Lal's supplemental report was also vague and lacking in rationale, the Office was obliged to obtain an additional supplemental report or to submit the case record and a

¹⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁹ *See Elaine Sneed*, 56 ECAB 373 (2005).

²⁰ *Cecilia M. Corley*, 56 ECAB 662 (2005).

²¹ *L.R. (E.R.)*, *supra* note 14; *Phillip H. Conte*, *supra* note 14; *Guiseppa Aversa*, *supra* note 14.

detailed statement of accepted facts to a second impartial specialist for the purpose of obtaining his rationalized medical opinion on the issue.²² The Office failed to do so.

On appeal, appellant's representative and her physician contend that Dr. Lal's July 7, 2008 report is insufficient to establish that she had no continuing residuals from her accepted injury and that objective evidence proves otherwise.²³ The Board agrees that Dr. Lal's report requires clarification and elaboration.

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter.²⁴ While the claimant has the responsibility to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.²⁵ Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.²⁶ As it undertook development of the medical evidence by referring appellant to Dr. Lal, it had an obligation to secure a report adequately addressing the relevant issue.²⁷ The Office's obligation to secure clarification of Dr. Lal's report was not automatically satisfied by its request for a supplemental report. The Office's obligation continues until it receives a proper report. Therefore, the case shall be remanded to the Office for a supplemental opinion from Dr. Lal, which provides clarification and elaboration. If Dr. Lal is unwilling or unable to clarify and elaborate on his opinion, the case should be referred to another appropriate specialist. After such further development as the Office deems necessary, an appropriate decision should be issued regarding this matter.

LEGAL PRECEDENT -- ISSUE 3

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of, employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. Once the work-connected character of any injury has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause and so long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable under the circumstances.²⁸

²² *Supra* note 15.

²³ The Board notes that appellant's representative did not file a pleading in support of this appeal. However, he and Dr. Simpson appeared before the Board on June 2, 2009 to present oral argument.

²⁴ *Vanessa Young*, 55 ECAB 575 (2004).

²⁵ *Richard E. Simpson*, 55 ECAB 490 (2004).

²⁶ *Melvin James*, 55 ECAB 406 (2004).

²⁷ *Peter C. Belkind*, 56 ECAB 580 (2005).

²⁸ *See Robert J. Wescoe*, 54 ECAB 162 (2002).

ANALYSIS -- ISSUE 3

The Board finds that the medical evidence is insufficient to establish that appellant developed a stress condition as a consequence of her accepted injury.

Medical evidence of record relevant to appellant's alleged stress condition consists of reports from Dr. Hemsley, Dr. Jurani, Dr. Faber and Mr. Perez. None of their reports contain a rationalized medical opinion explaining how appellant's stress and anxiety was causally related to her accepted conditions. On December 30, 2002 Dr. Hemsley stated that appellant had been "out of work due to stress. On February 25, 2003 she stated that "there may be some emotional overlay as well as stress-related overlay to her symptoms. Dr. Hemsley did not provide a definitive diagnosis or an opinion as to the cause of appellant's depression. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.²⁹ Moreover, Dr. Hemsley is not an expert in the area of psychology or psychiatry.

On May 27, 2003 Dr. Jurani stated that she had been treating appellant since December 2002 for stress and anxiety related to pain occurring due to a July 2002 work-related injury. On May 29, 2003 Mr. Perez, a licensed clinical social worker, stated that he had been treating appellant since December 12, 2002 for an acute stress disorder brought on by anxiety and depression related to a physical injury at work. On July 2, 2003 Dr. Faber diagnosed acute stress disorder, which "appears to be originated/precipitated by the injuries at work on July 17, 2002." None of these reports contains an explanation as to how appellant's diagnosed stress condition resulted from her pain symptoms. Medical conclusions unsupported by rationale are of little probative value.³⁰

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.³¹

The Board finds that the evidence of record is insufficient to discharge appellant's burden of establishing that her claimed stress condition was a consequence of her accepted injury.³²

²⁹ *Michael E. Smith, supra* note 18.

³⁰ *Willa M. Frazier, 55 ECAB 379.*

³¹ *Phillip L. Barnes, 55 ECAB 426 (2004); see also Dennis M. Mascarenas, 49 ECAB 215 (1997).*

³² The Office stated in its October 21, 2003 notice of proposed termination that appellant had filed an emotional condition claim (File No. xxxxxx715), in which she alleged that she sustained a stress condition due both to harassment in the workplace and pain from her orthopedic injuries. It addressed appellant's claim for a consequential stress-related condition in its November 21, 2003 termination decision.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation and medical benefits effective November 21, 2003. The Board also finds that this case is not in posture for a decision as to whether she had any continuing residuals or disability after November 21, 2003. The Board further finds that appellant failed to establish that she developed an emotional condition as a consequence of her accepted conditions.

ORDER

IT IS HEREBY ORDERED THAT the September 22, 2008 decision of the Office of Workers' Compensation Programs' is affirmed as to the termination of medical and compensation benefits effective November 21, 2003 and set aside and remanded for further development of the medical evidence on the issue of continuing residuals and disability. It is further ordered that the September 22, 2008 decision is affirmed as to the denial of appellant's request to expand her claim to include a consequential emotional condition.³³

Issued: November 12, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

³³ The Board's ruling does not affect the Office's expansion of appellant's claim to include an aggravation of degenerative arthritis of the lumbar spine, with bulging of the lumbar discs in the L3-4, L4-5 and L5-S1 regions.