

FACTUAL HISTORY

This case has previously been on appeal before the Board.² In a March 18, 2009 decision, the Board affirmed the June 3, 2008 decision of the Office hearing representative, which found that appellant met her burden of proof in terminating her compensation benefits effective October 23, 2007. The facts and history contained in the prior appeal are incorporated by reference.

Following the June 3, 2008 decision, the Office received additional medical evidence including some previously of record and some involving different medical condition. The new evidence relating to the relevant condition, included reports from Dr. Jonathan S. Citow, a Board-certified neurological surgeon, who performed the May 2007 cervical discectomy and fusion. In his November 2, 2006 report, Dr. Citow noted that he had reviewed an October 1, 2005 magnetic resonance imaging (MRI) scan of the cervical and thoracic spine. In his February 15, 2008 report, he advised that appellant continued to have “diffuse aches and pains” and related that she “feels too debilitated to work.” Dr. Citow indicated that he was waiting for a functional capacity evaluation.

On March 1, 2010 counsel requested reconsideration. Accompanying the request was February 11, 2010 correspondence from appellant indicating that she had difficulty obtaining information from Dr. Citow.

By decision dated June 11, 2010, the Office denied modification of the prior decision.

LEGAL PRECEDENT

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. 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.³

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. 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.⁴

² Docket No. 08-1864 (issued March 18, 2009).

³ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

ANALYSIS

Following the Board's affirmance of the Office's June 3, 2008 decision, which terminated appellant's compensation benefits effective October 23, 2007, appellant submitted additional medical evidence. The additional evidence included a previous report of Dr. Citow. The Board notes that the termination and appellant did not explain how they supported an ongoing work-related condition beginning October 23, 2007. Other reports, not previously of record, do not address the previously accepted employment conditions and do not provide any opinion regarding the cause of appellant's condition. 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.⁵

Appellant also provided the February 15, 2008 report from Dr. Citow, who noted that she continued to have aches and pains and felt "too debilitated to work." The Board notes that Dr. Citow did not provide a rationalized opinion explaining why any work-related disability continued after termination of her wage-loss compensation benefits on October 23, 2007. As Dr. Citow had been on one side of the conflict in the medical opinion that an impartial specialist resolved, Dr. Citow's report is insufficient to overcome the special weight accorded the impartial specialist or to create a new medical conflict absent any new findings and rationale in support of causal relationship.⁶

As appellant did not provide sufficient medical rationale to establish disability causally related to the October 11, 2005 accepted employment injury, she has failed to meet her burden of proof. On reconsideration, appellant asserted that she had difficulty obtaining evidence from Dr. Citow. As noted, rationalized evidence is necessary to establish causal relationship and, as the Office had properly terminated benefits, she has the burden of proof to provide such evidence to establish her claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she had any disability after October 23, 2007 causally related to the October 11, 2005 employment injury.

⁵ *Michael Smith*, 50 ECAB 313 (1999).

⁶ *See Barbara J. Warren*, 51 ECAB 413 (2000); *Alice J. Tysinger*, 51 ECAB 638 (2000).

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

MEMORANDUM

TO: Board
FROM: Maureen
RE: *Robert A. Lewis*, 10-1309

The Board should note that it issued a decision on April 20, 2010 which affirmed the Office's May 5, 2009 and August 18, 2008 decisions denying appellant's June 16, 2006 recurrence claim. As the Board's decision was issued subsequent to appellant's appeal on April 1, 2010 and the Office's March 16, 2010 decision, I did not include it in the first paragraph of the facts. If the Board would like its decision included in the factual history, I would be happy to do so.