

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

CHARLENE SMITH, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Perry Point, MD, Employer**

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**Docket No. 04-19
Issued: February 20, 2004**

Appearances:
Charlene Smith, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 23, 2003 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated August 18, 2003. Under 20 C.F.R. §§ 501.2(c), 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she has any continuing disability after April 21, 2002, causally related to her accepted employment injuries.

FACTUAL HISTORY

This is the second appeal in this case. On the first appeal, the Board reviewed the Office's April 2, 2002 decision, by which the Office terminated appellant's compensation

benefits effective April 21, 2002.¹ By decision dated October 2, 2002, the Board affirmed the Office's April 2, 2002 decision. The Board specifically found that the weight of the medical opinion evidence rested with Dr. Stephen R. Bailey, a Board-certified orthopedic surgeon and Office second opinion physician, who concluded that appellant's employment-related ankle, thigh and low back strains and sprains had fully resolved, with no residuals, and that appellant was fully capable of returning to her date-of-injury position. The Board noted that Dr. Bailey's report outweighed the unrationalized report of Dr. Michael Levine, appellant's treating Board-certified orthopedic surgeon. The Board therefore concluded that the medical evidence established that appellant's disability causally related to her employment-related injuries, had ceased, and that the Office properly terminated her compensation effective April 21, 2002.² By Order dated April 21, 2003, the Board denied appellant's request for reconsideration of its October 2, 2002 decision. The law and the facts of this case as set forth in the Board's October 2, 2002 decision are herein incorporated by reference.

By letter dated June 26, 2003, appellant, through counsel, requested reconsideration before the Office and submitted additional medical evidence and arguments she believed warranted further consideration. In a decision dated August 18, 2003, the Office found the newly submitted evidence insufficient to warrant modification of its prior decision.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.³ 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 ceased or that it is no longer related to the employment.⁴ In this case, in its decision dated October 2, 2002, the Board found that the Office had met its burden of proof to terminate appellant's compensation benefits effective April 21, 2002. Therefore, the burden of proof shifted to appellant to establish that she still suffers from residuals of her accepted employment injury.⁵

¹ On June 2, 1979 appellant, then a 42-year-old licensed practical nurse, filed a claim for traumatic injury alleging that she sustained injuries to her right ankle, right thigh and back due to factors of her federal employment. The Office accepted her claim for right ankle sprain, right thigh muscle strain, and lumbosacral strain on August 13, 1980. Appellant stopped work on May 27, 1979 and returned to part-time light-duty work as a library aide on November 2, 1981. She again stopped work on November 21, 1981 and did not return. In a decision dated January 20, 1984, the Office reduced appellant's wage-loss compensation benefits effective November 2, 1981, based on her ability to perform the duties of a library aide.

² Docket No. 02-1383.

³ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁴ *Id.*

⁵ *Gayle Harris*, 52 ECAB 319 (2001).

ANALYSIS

In support of her request for reconsideration of the Office's decision terminating benefits effective April 21, 2002, appellant submitted an April 9, 2003 medical report from Dr. Levine. In a prior report of record dated March 6, 2002, previously considered by the Board, Dr. Levine noted that he began seeing appellant on March 17, 1989 for low back pain following an employment injury and stated:

“She has had chronic lumbosacral pain since that time. She has been followed on a several times a year basis ever since then for a similar problem and has never gained full improvement. At this time, I feel that her back problems have remained related to that injury in 1978, for I have never seen 100 percent improvement following that.”

In his new report dated April 9, 2003, Dr. Levine provided a chronology of appellant's condition, progress and treatment since March 17, 1989, ending with her most recent flare-up of back pain in March 2003, and noted that repeat magnetic resonance imaging had revealed the presence of severe stenosis at L4-5. Regarding the cause of appellant's condition, Dr. Levine concluded:

“I feel that her back problems were initiated by the injury, which occurred in 1978 and as a result this has been a lifelong problem. However, there is an element of degeneration to her stenosis as well. I do not feel that she ever completely recovered from her original injury based on the history that she has provided to me, particularly involving the lumbar spine.”

The Board finds that the new report submitted from Dr. Levine essentially reiterates his prior report. In addition, as in his prior report, Dr. Levine's recent report does not contain any explanation as to how and why appellant's continued back pain is causally related to her accepted employment injury so many years after the event, and does not provide any objective evidence to support his conclusions. To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁶ Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ Rationalized medical opinion 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 employment 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.⁸ The weight

⁶ See 20 C.F.R. § 10.115(e); *Manuel Gill*, 52 ECAB 282 (2001).

⁷ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

⁸ *Claudio Vazquez*, 52 ECAB 496 (2001); *Gloria J. McPherson*, 51 ECAB 441 (2000).

of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁹ As Dr. Levine failed to provide the requisite explanation for his conclusion, his opinion is unrationalized and is therefore insufficient to establish that appellant continues to be disabled due to her accepted employment injuries.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she has any continuing disability after April 21, 2002, causally related to her accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 18, 2003 is affirmed.

Issued: February 20, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ *Duane B. Harris*, 49 ECAB 170 (1997).