

when she was knocked down by falling mail containers. She stopped work that day and submitted an unsigned attending physician's report and discharge instructions from St. Clare's Hospital dated March 13, 2002 which provided a diagnosis of neck sprain and instructions of "bed rest today," warm moist heat and medication. On May 9, 2002 the Office accepted that she sustained a cervical sprain and later expanded the accepted condition to include cervical dislocation.

In a report dated March 22, 2002, Dr. Ahmed Elfiky, a neurologist, noted the history of injury and appellant's complaints of headaches, neck stiffness and mid and low back pain. He diagnosed post-traumatic headaches and traumatic cervical, thoracic and lumbar myofascial pain and radiculitis. Dr. James C. Hirschy, Board-certified in radiology, interpreted x-rays dated March 25, 2002. The lumbar spine, pelvis and hips were normal. X-ray of the dorsal spine demonstrated scoliosis, and cervical spine x-rays showed degenerative disc disease and osteoarthritis at C4-5. In a report dated April 1, 2002, Dr. Howard I. Baum, Board-certified in orthopedics, noted appellant's complaints of neck and low back pain and tingling in the right hand. He diagnosed cervical and lumbar derangement sprain and shoulder impingement. In a New York state form report dated April 8, 2002, Dr. Stephen Matrangelo, a chiropractor, noted seeing appellant on March 27, 2002 with a diagnosis of cervicgia/neck pain, thoracic pain, lumbalgia lumbago and radiculitis, thoracic or lumbar.

Appellant came under the care of Drs. Scott Siegel and Ali Umjarow, chiropractors, who advised that she was totally disabled. In an attending physician's report dated April 8, 2002, Dr. Siegel noted a history of injury to the head, neck, shoulders and back and diagnosed traumatic derangement of the spinal column and cervical, thoracic and lumbar sprain/strain. He advised that appellant was totally disabled and noted referrals to a neurologist and orthopedic surgeon. Nerve conduction studies of the upper and lower extremities dated April 16, 2002 were interpreted by Dr. David M. Burke, a Board-certified neurologist, as normal. In an attached New York state form, Dr. Burke diagnosed lumbosacral and cervical spondylosis. Dr. Elfiky reiterated his diagnosis in a May 10, 2002 report. Appellant also submitted a number of reports of physical performance, and muscle and sensory nerve conduction threshold testing performed under the aegis of Dr. Matrangelo or Dr. Siegel.

Appellant returned to limited duty on June 5, 2002 and full duty on July 5, 2002. On July 16, 2002 she submitted a recurrence of disability claim, alleging that on July 12, 2002 she had to stop work due to back spasms, constant headaches and cramping of the hands and wrists. She submitted a report dated July 12, 2002 in which Dr. Amran Weiner, a chiropractor, provided a history that appellant sustained injuries to her spine, shoulders, head, wrists and hand on March 5, 2002 and advised that she had a "severe acute exacerbation of her conditions" which forced her to stop work. He stated that "of most concern" were the findings in her hands and wrists and recommended orthopedic consultation.

In a report dated July 17, 2002, Dr. Harvey S. Bishow, Board-certified in orthopedic surgery, noted a history of bilateral hand pain since March 13, 2002. Examination of the hands revealed no swelling, redness or deformity, normal range of motion and decreased sensation bilaterally. His impression was rule out carpal tunnel syndrome. In a report dated July 20, 2002, the physician noted a history that when appellant was hit by the falling mail on March 13, 2002 she put her hands out to stop herself and sustained dorsiflexion injuries to both wrists. He noted

examination findings of pain and decreased sensation of the wrists and hands and diagnosed bilateral wrist sprains with probable carpal tunnel syndrome. He recommended electromyography (EMG) and nerve conduction studies.

In reports dated July 31, 2002, Dr. Weiner noted that he had treated appellant since June 28, 2002 and that appellant related that, when hit by the falling mail, her hands “got jammed, bent and twisted with all my weight.” He described a multiplicity of complaints and examination findings of positive orthopedic tests and limited range of motion of the cervical spine. Dr. Weiner’s conclusion was that appellant suffered injuries to the cervical, upper thoracic and lumbar spines and to the shoulders and wrists on March 13, 2002. He further noted the diagnoses of cervical and lumbar subluxation by x-ray.

In a report dated August 28, 2002, Dr. Bishow advised that appellant’s bilateral wrist condition was deteriorating and requested EMG evaluation. On September 23, 2002 the Office accepted that appellant sustained a recurrence of disability and authorized EMG and physical therapy. In an October 9, 2002 report, Dr. Bishow advised that appellant’s wrist condition was the same, reiterated his request for EMG evaluation, and opined that appellant was totally disabled. By letter dated October 16, 2002, the Office advised Dr. Bishow that EMG had been authorized, stating that the accepted conditions were neck sprain and cervical dislocation. The Office noted that carpal tunnel syndrome had not been accepted as employment related and requested an opinion regarding the cause of this condition.

Dr. Weiner continued to submit reports advising that appellant was totally disabled. By report dated November 1, 2002, he noted the history that appellant injured her wrists “very severely” on March 13, 2002 and listed her complaints of pain in the cervical spine radiating to the upper extremities, dorsal spine pain extending into the scapulas bilaterally, lower back pain radiating into the buttocks, and extreme pain, weakness and tenderness in the wrists and hands bilaterally. Dr. Weiner noted test results positive for pain and reported decreased range of motion of the cervical spine. Additional findings were active and latent trigger points in multiple areas of the spinal musculature with significant weakness in both hands. Dr. Weiner concluded that appellant was still symptomatic from her injury and recommended magnetic resonance imaging of the cervical spine.

On November 23, 2002 appellant was assigned to a nurse intervention program. In an undated work capacity evaluation stamped received by the Office on December 13, 2002, Dr. Bishow advised that appellant could not work. By report dated December 18, 2002, Dr. Weiner noted treating appellant since June 28, 2002 for multiple injuries sustained on March 13, 2002. He reiterated his opinion that her wrists had been severely injured at work. Dr. Weiner continued to advise that appellant was totally disabled.

The Office referred appellant, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Kenneth Falvo, Board-certified in orthopedic surgery. In a work capacity evaluation dated December 19, 2002, Dr. Falvo advised that appellant could work eight hours per day with no restrictions. In a report dated December 23, 2002, he noted appellant’s history of injury and complaints and his review of the medical record, noting that she received chiropractic treatment three times weekly and took no medication. Dr. Falvo provided examination findings including that cervical examination demonstrated no spinous process

tenderness and no paravertebral spasm or masses. He diagnosed cervical and low back sprain, resolved, and contusion of both wrists, resolved and advised that appellant had no disability and could return to full-time regular duty.

In a letter dated March 8, 2003, the Office informed appellant that it proposed to terminate her compensation benefits on the grounds that her accepted condition had resolved. Appellant disagreed with the proposed termination and submitted reports dated March 24 and 31, 2003 in which Dr. Weiner reiterated his conclusion that appellant suffered multiple injuries on March 13, 2002 and could not work.

In a decision dated April 10, 2003, the Office terminated appellant's compensation benefits, effective April 19, 2003, on the grounds that the medical opinion evidence as provided by Dr. Falvo established that she no longer suffered from residuals of her employment-related cervical injury.

On August 8, 2003 appellant requested reconsideration and submitted duplicates of medical evidence previously of record. She also submitted April 21 and June 19, 2003 reports in which Dr. Weiner reiterated his previous diagnoses and conclusions, and an April 2, 2003 x-ray of the cervical spine report interpreted by Dr. Laurence Cohen, Board-certified in diagnostic radiology, as demonstrating reversal of cervical curvature likely due to muscle spasm, mild narrowing of C4-5 and C5-6 disc spaces likely due to degenerative disc disease, and mild anterior wedging with a small osteophyte at C5, also likely degenerative in nature. In reports dated June 25, August 12 and September 19, 2003, Dr. Weiner reiterated that appellant was totally disabled, stating that her most significant "sites of disabilities and suffering" were the cervical spine with radicular symptoms and bilateral carpal tunnel syndrome symptoms. He reported examination findings of decreased range of motion of the lumbosacral and cervical spines and concluded that her condition was permanent.

By decision dated October 20, 2003, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was cumulative or irrelevant.

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. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.¹ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.²

¹ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

² *Gewin C. Hawkins*, 52 ECAB 242 (2001).

ANALYSIS -- ISSUE 1

On March 13, 2002 appellant sustained an employment-related cervical sprain and dislocation. The Office terminated appellant's compensation benefits effective April 19, 2003, based on the opinion of the Office referral physician, Dr. Falvo, that her employment-related conditions had resolved and she was no longer disabled.

The medical evidence relevant to the termination of appellant's compensation benefits for her accepted cervical conditions includes reports dated November 1 and December 18, 2002 and March 24 and 31, 2003 in which her attending chiropractor, Dr. Weiner, noted that he began treating her on June 28, 2002 for multiple injuries sustained on March 13, 2002. He described her multiple complaints including cervical pain extending into the upper extremities. Dr. Weiner stated that cervical range of motion was decreased and found active and latent trigger points in multiple areas of spinal musculature and opined that appellant's shoulder and wrist conditions were also employment related and that she continued to be totally disabled. He also noted that sensory nerve conduction threshold testing was suggestive of abnormal nerve involvement and noted x-ray findings of degenerative disc disease and osteoarthritis, conditions that have not been accepted as employment related.

Dr. Falvo, the Office referral physician and Board-certified orthopedic surgeon, provided a December 19, 2002 work capacity evaluation in which he advised that appellant could work eight hours per day without restriction. In a report dated December 23, 2002, he noted his review of the medical record and examination findings and advised that her employment-related conditions had resolved. Dr. Falvo opined that appellant was not disabled and could return to regular duty. He found no basis on which to attribute any continuing residuals of the accepted injury.

While Dr. Weiner opined that appellant was totally disabled, it is noted that in a report dated July 12, 2002 he advised that "of most concern" were the findings in appellant's hands and wrists, conditions that have not been accepted as employment related. Furthermore, he did not provide any explanation of how her accepted conditions caused her to be disabled, and medical reports not containing rationale on causal relationship are entitled to little probative value.³ Furthermore, section 8101(2) of the Federal Employees' Compensation Act⁴ provides that chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-rays to exist.⁵ Thus, his opinion is not considered competent medical evidence in evaluation of other disorders, including those of the extremities, although these disorders may originate in the spine.⁶ In this case, while Drs. Matrangelo, Siegel, Umjarow and Weiner were authorized to treat appellant's accepted

³ *Jimmie Duckett*, 52 ECAB 332 (2001).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 5 U.S.C. § 8101(2); *Phyllis F. Cundiff*, 52 ECAB 439 (2001).

⁶ *See Pamela K. Guesford*, 53 ECAB ____ (Docket No. 02-915, issued August 12, 2002).

spinal subluxation, they could not evaluate her hand and wrist conditions or other back conditions, and their opinions on these or other conditions are not competent medical evidence.⁷

Consequently, the report of Dr. Falvo is sufficient to establish that appellant has no continuing residuals of her accepted cervical injury.

To the degree that appellant is contending that she injured her hands and wrists when she fell on March 13, 2002, for conditions not accepted by the Office as being employment related, it is her burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove any such relationship.⁸

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁹ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.¹⁰ 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 causal relationship.¹¹

The first mention of any hand condition is by Dr. Baum in a report dated April 1, 2002 that appellant had tingling in her right hand; however, EMG studies performed on April 16, 2002 were reported to be normal. Appellant submitted reports dated July 1 and 20, August 28 and October 9, 2002 in which Dr. Bishow, Board-certified in orthopedic surgery, noted a history that appellant put out her hands to stop her fall on March 13, 2002. He noted examination findings of pain and decreased sensation and diagnosed wrist sprain and probable carpal tunnel syndrome but did not provide a cause of the diagnosed condition. 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.¹²

Finally, the Board notes that although the Office authorized EMG evaluation on September 23, 2002 and requested that Dr. Bishow furnish a report regarding the cause of appellant's wrist condition, there is no evidence of record to indicate that the EMG was performed or that Dr. Bishow responded to the Office request. There is, therefore, no competent

⁷ *Id.*

⁸ *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² *Michael E. Smith*, 50 ECAB 313 (1999).

medical evidence indicating that appellant's hand and wrist conditions were caused by the March 12, 2002 employment injury.

For these reasons, the Office properly relied on Dr. Falvo's opinion in terminating appellant's compensation benefits and appellant has not met her burden of proof to establish that any hand or wrist condition is employment related.

LEGAL PRECEDENT -- ISSUE 2

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).¹³ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.¹⁴ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁵

ANALYSIS -- ISSUE 2

In her letter requesting reconsideration, appellant provided a history of injury, the treatment provided and described present symptoms. She asserted that the medical evidence established that she continued to be disabled and further alleged that Dr. Falvo did not review the evidence of record. She also submitted additional evidence including duplicates of evidence previously of record and reports dated April 21, June 19 and 25, August 12 and September 19, 2003 from Dr. Weiner and an April 2, 2003 x-ray of the cervical spine which demonstrated degenerative changes.

Appellant did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, and contrary to her argument that Dr. Falvo did not review the evidence of record, in his report dated December 23, 2002, the physician noted his review of the medical evidence. While reopening a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.¹⁶ The Board finds appellant's argument regarding Dr. Falvo's report does not rise to the level of requiring merit review.

¹³ 20 C.F.R. § 10.608(a).

¹⁴ 20 C.F.R. § 10.608(b)(1) and (2).

¹⁵ 20 C.F.R. § 10.608(b).

¹⁶ *Robert P. Mitchell*, 52 ECAB 116 (2000).

In the newly submitted reports from Dr. Weiner, he merely reiterated his previous diagnoses and conclusions, and the Board has held that evidence that repeats or duplicates evidence already in the case record does not constitute a basis for reopening a claim for merit review.¹⁷ Likewise, the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁸ Thus, as the April 2, 2003 x-ray does not address whether appellant continues to be disabled from her accepted conditions, it is insufficient to warrant merit review. Appellant therefore did not meet any of the necessary requirements to establish that she was entitled to a merit review.¹⁹

CONCLUSION

The Board therefore finds that the Office met its burden of proof to terminate appellant's compensation benefits effective April 19, 2003. The Board also finds that the Office properly denied appellant's request for merit review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 20 and April 10, 2003 be affirmed.

Issued: October 26, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁷ *James R. Bell*, 52 ECAB 414 (2001).

¹⁸ *Alan G. Williams*, 52 ECAB 180 (2000).

¹⁹ *See James E. Norris*, 52 ECAB 93 (2000).