

contusion, lumbosacral sprain, contusion of multiple sites of left lower extremity, left ankle sprain and left knee contusion. Appellant stopped work on December 12, 2003 and has not returned to work. The Office placed him on the periodic rolls for temporary total disability.

On May 18, 2004 the Office received an undated attending physician's report (Form CA-20) by Dr. Monica Mehta, a treating Board-certified physiatrist. She noted that appellant was totally disabled and required physical therapy. Dr. Mehta diagnosed a lumbosacral radiculopathy.

In a May 21, 2004 Form CA-20, Dr. Mehta diagnosed right knee internal derangement and lumbosacral radiculopathy. She indicated that appellant remained totally disabled and required physical therapy.

On June 4, 2004 the Office received a report dated May 12, 2004, Dr. Iris A. Drey, a second opinion Board-certified orthopedic surgeon, diagnosed "fully resolved left shoulder contusion, fully resolved left ankle sprain, healing left knee contusion, resolving lumbar inflammation." A physical examination revealed normal range of motion of the right and left shoulders, wrists and elbows and cervical spine. As to the thoracic and lumbar spine, Dr. Drey reported normal range of motion for forward flexion, 20 degrees back extension, 20 degrees right lateral bending and 20 degrees left lateral bending. She reported "some tenderness with palpation of the paraspinal muscles of the lumbar spine." Dr. Drey noted a normal motor examination of the lower extremities with negative bilateral straight leg tests. A physical examination of the left knee revealed normal range of motion, no instability, a negative McMurray sign, "no ligamentous laxity present" and "pain with palpation of the medial joint line." In concluding, Dr. Drey opined that appellant "appears to have resolved for the most part his injuries related to" the December 12, 2003 injury. She recommended "another orthopedic followup for the left knee" and concluded that he was capable of returning to his date-of-injury position with no restrictions.

In a June 4, 2004 Form CA-20, Dr. Mehta diagnosed left knee internal derangement and lumbosacral radiculopathy. She indicated that appellant remained totally disabled and required physical therapy. In a June 15, 2004 Form CA-20, Dr. Mehta diagnosed left knee internal derangement and lumbosacral radiculopathy. She indicated that appellant remained totally disabled and required physical therapy.

In a prescription note dated August 31, 2004, Dr. Mehta opined that appellant remained totally disabled.

On October 15, 2004 the Office referred appellant to Dr. Paul A. Foddai, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Drey and Dr. Mehta on the issue of whether he had any continuing disability due to his accepted employment injury.

In a report dated November 22, 2004, Dr. Foddai noted the statement of accepted facts related that appellant's claim had been accepted for left ankle sprain, left knee sprain and left shoulder contusion. He concluded that appellant's back, shoulder, elbow, ankle and back pain had resolved. A physical examination revealed full range of motion in the elbow, a normal gait

pattern for the ankle and normal range of motion in the ankle. Dr. Foddai noted appellant's range of motion in the lumbosacral area was normal with "no spasm, fasciculation or guarding either at rest or during range of motion testing." An examination of the shoulder revealed no atrophy and normal range of motion.

On February 14, 2005 the Office issued a notice of proposed termination of compensation for lost wages and medical benefits. The Office found that the November 22, 2004 report of Dr. Foddai, the impartial medical specialist, constituted the weight of the medical evidence of record. Appellant was afforded 30 days to submit any additional evidence or argument.

By decision dated March 22, 2005, the Office terminated appellant's compensation on the grounds that he no longer had any residuals or disability due to his accepted employment injuries.¹

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.² After it has determined that an employee has disability causally related to his 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.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

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.⁵

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."⁶ Where a case is referred to an impartial medical specialist for the purpose of

¹ The Board notes that, following the March 22 2005 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. See 20 C.F.R. § 501.2(c); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

² *Paul L. Stewart*, 54 ECAB 824 (2003).

³ *Elsie L. Price*, 54 ECAB 734 (2003).

⁴ See *Del K. Rykert*, 40 ECAB 284 (1988).

⁵ *James F. Weikel*, 54 ECAB 660 (2003).

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

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.⁷

ANALYSIS

In this case, the Office properly determined that a conflict existed in the medical opinion evidence as to whether appellant had any continuing disability due to his accepted December 12, 2003 employment-related injuries. Dr. Mehta, his treating physician, opined that he was disabled due to his accepted employment injury while Dr. Drey, an Office referral physician, opined that appellant was not disabled and the conditions had resolved.

In a report dated November 22, 2004, Dr. Foddai, based upon a review of the medical records, statement of accepted facts and physical examination, concluded that appellant's back, shoulder, elbow, ankle and back pain had resolved. A physical examination revealed full range of motion in the elbow, a normal gait pattern for the ankle and normal range of motion in the ankle. Dr. Foddai noted that appellant's range of motion in the lumbosacral area was normal with "no spasm, fasciculation or guarding either at rest or during range of motion testing." An examination of the shoulder revealed no atrophy and normal range of motion.

The Board finds that the Office properly relied on Dr. Foddai's November 22, 2004 report in determining that appellant's accepted employment injury had resolved. His opinion is sufficiently well rationalized and based upon a proper factual background. Dr. Foddai not only examined him but also reviewed appellant's medical records. He also reported accurate medical and employment histories. The Office properly accorded special weight to the impartial medical specialist's findings.⁸ As the weight of the medical evidence establishes that appellant's accepted left shoulder contusion, lumbosacral sprain, contusion of multiple sites of left lower extremity, left ankle sprain and left knee contusion has resolved, the Office properly terminated his wage-loss compensation and medical benefits.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation for his orthopedic condition on the grounds that he no longer had any disability causally related to his December 12, 2003 employment injuries.

⁷ *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

⁸ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Bryan O. Crane*, 56 ECAB ____ (Docket No. 05-232, issued September 2, 2005); *Gary R. Sieber*, *supra* note 7 at 225.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 22, 2005 is affirmed

Issued: May 12, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board