



Her claim was accepted for lumbosacral strain. Appellant returned to work subject to physical limitations on repetitive twisting and turning.

In a January 25, 2002 report, Dr. Edward Trachtman, a Board-certified physiatrist, found no malalignment of the sacroiliac. In a February 2, 2002 report, Dr. Mary Louder, a treating physician, provided a diagnosis of low back pain, lumbar strain and sacroiliitis. On April 30, 2002 she stated that appellant continued to experience chronic pain in her lower back. Appellant continued to work within specified limitations.

On January 8, 2003 the Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. A. Ronald Rook, Board-certified in emergency medicine, for a second opinion examination and an opinion as to whether she had residuals from the September 11, 2000 injury.

In a report dated January 21, 2003, Dr. Rook reviewed appellant's medical history, history of injury and job requirements. He diagnosed chronic sacroiliitis bilaterally, with probable fibromyalgia and a resolved lumbar strain. Dr. Rook stated that the twisting injury of September 11, 2000 could have caused an irritation to the sacroiliac and lumbar spine, but that any such irritation had since resolved. On examination, Dr. Rook found no residuals from appellant's accepted injury. He opined that her accepted lumbar strain had fully resolved and that appellant was able to return to work eight hours per day with no physical restrictions. Dr. Rook further opined that appellant's fibromyalgia-like symptoms were not related to the September 11, 2000 work injury. In a March 3, 2003 addendum report, he opined that appellant's candida condition and cervical biopsy were not causally related to the accepted injury. In an April 21, 2003 addendum, Dr. Rook reiterated that the September 11, 2000 injury may have irritated appellant's sacroiliac, but that the condition resolved in less than six months, along with the lumbar strain. He further indicated that her continued complaints were the result of the fibromyalgia, which was not work related.

In an April 20, 2003 report, Dr. Ann M. Auburn, Board-certified in family medicine, disagreed with Dr. Rook's opinion. She opined that appellant demonstrated many residuals related to her accepted lumbar strain. Dr. Auburn provided diagnoses of chronic pain, lumbago, sacroiliitis, cervicalgia, muscle imbalance, recurrent somatic dysfunction, ligamentous laxity and generalized myofascial pain leading to chronic fatigue.

The Office found a conflict between the opinion of Dr. Auburn, Dr. Louder and Dr. Rook. In order to resolve the conflict, the Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. Michael Holda, a Board-certified orthopedic surgeon. His January 8, 2004 report reviewed the medical and work histories, a description of the records and findings on physical examination. Dr. Holda found evidence of mild degenerative arthritis of the lumbar spine consistent with appellant's age. He found no objective evidence that appellant continued to have residuals from the accepted September 11, 2000 work injury. On examination, appellant flexed 80 out of 90 degrees at the waist, with complaints of some back pain and extended 20 out of 30 degrees at the waist. She had a 30 degree side bend bilaterally without pain and no tenderness or spasm to palpation to the lumbar paravertebral musculature. Dr. Holda found no localizing neurological deficits in the lower

extremities and no atrophy in the thighs or calves. Sensation to light touching in the lower extremities was maintained. The extensor hallicus longus musculature was strong bilaterally. Straight leg raising was performed in the seated position. With 90 degree elevation of the right leg, appellant complained of low back pain and some pain in the right lateral hip area. With 90 degree elevation of the left leg, she complained of low back pain, left lateral hip pain and groin pain. A February 27, 2001 magnetic resonance imaging (MRI) scan of the thoracic spine was unremarkable, but showed some arthritic changes. An MRI scan of the lumbar spine performed on the same date showed mild arthritic changes, generalized, as well as some mild bulging of L4-5 and L5-S1. A May 8, 2000 MRI scan of the lumbar spine also revealed some mild generalized arthritic changes and disc bulging at L4-5, L5-S1. Dr. Holda opined that appellant had fully recovered from her work-related injuries sustained on September 11, 2000.

By letter dated February 25, 2004, the Office proposed to terminate appellant's medical benefits on the grounds that the weight of the medical evidence contained in Dr. Holda's January 8, 2004 report demonstrated that she had no residuals causally related to the accepted injury. She was given 30 days to submit additional evidence or argument in support of her claim.

In duty status reports dated February 19 and March 11, 2004, Dr. Auburn provided diagnoses of sacroiliitis, lumbago and cervicgia due to the September 11, 2000 work injury, and indicated that appellant had degenerative changes of the lumbar spine. She provided work restrictions, including no lifting, pushing or pulling more than 35 pounds, no mail carrying, no sitting longer than one and a half hours and no repetitive twisting, turning or bending.

By decision dated March 30, 2004, the Office finalized the termination of appellant's medical benefits effective that date. The Office found that the weight of the medical evidence, which rested with Dr. Holda established that appellant had no remaining residuals related to the September 11, 2000 injury.

On February 11, 2005 appellant, by counsel, requested reconsideration, alleging that the March 30, 2004 decision was contrary to fact and law. She submitted treatment notes from Dr. Auburn for the period May 24, 2004 through January 20, 2005, as well as reports from her dated March 12, 2004 and January 15, 2005. On May 24, 2004 Dr. Auburn indicated that appellant had acute low back and neck strain resulting from an injury sustained when she fell while delivering express mail on May 21, 2004. She provided diagnoses of acute lumbar and cervical strains, myositis, heavy metal toxicity and somatic dysfunction. On July 6, 2004 Dr. Auburn noted chronic pain underlying a history of several acute injuries. August 4, 2004 notes included a diagnosis of "late effect of work injury." On September 14, 2004 she diagnosed "late effect of work injury which was an acute cervical strain, as well as acute lumbar strain with myositis"; lumbago; cervicgia; somatic dysfunction; and myalgia. On January 6, 2005 she treated appellant for the "late effects of acute lumbar and cervical strains from [a] work injury." In a March 12, 2004 letter, Dr. Auburn opined that appellant was experiencing chronic pain and musculoskeletal problems secondary to a series of work-related injuries. She stated that, "this condition simply did not exist before the series of injuries from July 12, 1999 to September 11, 2000." In a narrative report dated January 15, 2005, Dr. Auburn opined that a May 21, 2004 work-related accident aggravated appellant's preexisting musculoskeletal

condition that was induced by other work injuries. She noted that prior to her first work injury on July 12, 1999 appellant had no musculoskeletal problems, but that by May 21, 2004 she had developed lumbago, cervicgia, myalgia and recurrent somatic dysfunction.

By decision dated March 29, 2005, the Office denied modification of its March 30, 2004 decision.

On April 6, 2005 appellant filed an appeal with the Board.<sup>1</sup> By order dated September 6, 2005, the Board remanded the case to the Office for reconstruction and proper assemblage of the record. The Board instructed the Office to issue an appropriate decision in order to protect appellant's rights of appeal.<sup>2</sup>

Appellant submitted a report dated August 16, 2005 from Dr. Perry W. Greene, Jr., a Board-certified orthopedic surgeon. He reviewed the medical record and the statement of accepted facts and opined that appellant did not have residuals from her May 21, 2004 work injury. There were no objective findings pertinent to the May 21, 2004 incident and that "the accepted causations ha[d] resolved from this injury." Dr. Greene stated that appellant began having a series of orthopedic back problems in May 2004, with pain in her lower back and neck. He noted that she reported multiple back injuries in February 2000 and began receiving cranial/sacral adjustments in September 2002. Dr. Greene indicated that she "was having continuing problems prior to the May 21, 2004 incident from which appellant was suffering residuals, problems that have not as yet resolved."

On September 13, 2005 the Office denied modification of its March 30, 2004 decision terminating appellant's medical benefits effective March 30, 2004.

On October 3, 2005 appellant filed an appeal with the Board. The appeal was docketed as No. 06-26. In an order dated February 7, 2006, the Board found that the Office had failed to consider Dr. Greene's August 16, 2005 report in its September 13, 2005 decision and remanded the case to the Office for consideration of all relevant evidence.<sup>3</sup>

In a decision dated March 22, 2006, the Office denied modification of its March 30, 2004 decision terminating appellant's medical benefits. The Office found that Dr. Greene's August 16, 2005 report was insufficient to overcome the findings of the impartial medical examiner, in that it failed to provide a well-reasoned opinion supported by objective findings that she suffered from active residuals due to the accepted September 11, 2000 work injury.

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<sup>1</sup> Docket No. 05-1072 (issued April 6, 2005).

<sup>2</sup> Docket No. 05-1072 (issued September 6, 2005).

<sup>3</sup> Docket No. 06-26 (issued February 7, 2006).

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>4</sup> It may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>7</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>8</sup>

Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part that, 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.<sup>9</sup> 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.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that the Office met its burden of proof to terminate appellant's benefits for her accepted lumbosacral strain effective March 30, 2004.

The Office properly determined that a conflict existed in the medical opinion evidence as to whether appellant had any residuals from her accepted September 11, 2000 employment-related injuries. On the one hand, appellant's treating physician, Dr. Louder, diagnosed lumbar strain and sacroiliitis and indicated that she continued to experience chronic pain in her lower back. Dr. Auburn opined that appellant demonstrated many residuals related to her accepted lumbar strain. On the other hand the Office's second opinion physician, Dr. Rook, found no residuals from appellant's accepted injury. He opined that her lumbar strain had fully resolved and that she was able to return to work with no restrictions.

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<sup>4</sup> See *Kathryn E. Demarsh*, 56 ECAB \_\_\_\_ (Docket No. 05-269, issued August 18, 2005). See also *Beverly Grimes*, 54 ECAB 543 (2003).

<sup>5</sup> *Id.*

<sup>6</sup> *James M. Frasher*, 53 ECAB 794 (2002).

<sup>7</sup> See *Kathryn E. Demarsh*, *supra* note 4. See also *Franklin D. Haislah*, 52 ECAB 457(2001).

<sup>8</sup> See *Kathryn E. Demarsh*, *supra* note 4.

<sup>9</sup> 5 U.S.C. § 8123(a); see also *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

<sup>10</sup> *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

In a well-rationalized report dated January 8, 2004, based upon a review of the medical records, statement of accepted facts and physical examination, Dr. Holda opined that appellant had fully recovered from the physical effects of the September 11, 2000 work injury. Although he found evidence of mild degenerative arthritis of the lumbar spine consistent with appellant's age, Dr. Holda found no objective evidence that she continued to suffer residuals from the accepted injury. On examination, she flexed 80 out of 90 degrees and extended 20 out of 30 degrees at the waist. Appellant had a 30 degree side bend bilaterally without pain and no tenderness or spasm to palpation to the lumbar paravertebral musculature. Dr. Holda found no localizing neurological deficits in the lower extremities and no atrophy in the thighs or calves. Sensation to light touching in the lower extremities was maintained. The extensor hallucis longus musculature was strong bilaterally. The Board finds that the Office properly relied on Dr. Holda's January 8, 2004 report in determining that appellant had no residuals causally related to the accepted September 11, 2000 injury. His opinion is sufficiently well rationalized and based upon a proper factual background. Dr. Holda not only examined appellant thoroughly, but also reviewed all medical records. He reported accurate medical and employment histories. The Office properly accorded special weight to the impartial medical specialist's findings.<sup>11</sup>

Appellant did not submit any rationalized medical evidence to overcome the weight of Dr. Holda's opinion or to create a new conflict prior to the termination of her medical benefits on March 30, 2004. Dr. Auburn's February 19 and March 11, 2004 duty status reports merely reiterated her findings and opinions which led to the conflict in medical opinion evidence and the referral to Dr. Holda. A subsequently submitted report of a physician on one side of a resolved conflict of medical opinion is generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.<sup>12</sup>

As the weight of the medical evidence contained in Dr. Holda's January 8, 2004 report establishes that appellant had no residuals from her September 11, 2000 injury, the Office properly terminated her compensation benefits effective March 30, 2004.

### **LEGAL PRECEDENT -- ISSUE 2**

Once the Office meets its burden of proof to terminate appellant's benefits, the burden shifts to appellant to establish that she has residuals causally related to her accepted injury.<sup>13</sup> To establish a causal relationship between any residuals claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.<sup>14</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>15</sup> Rationalized medical evidence is evidence which includes a physician's rationalized

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<sup>11</sup> *Bryan O. Crane*, 56 ECAB \_\_\_\_ (Docket No. 05-232, issued September 2, 2005).

<sup>12</sup> *Richard O'Brien*, 53 ECAB 234 (2001).

<sup>13</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>14</sup> *Id.*

<sup>15</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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 rationalized medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>16</sup> Neither the 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.<sup>17</sup>

### **ANALYSIS -- ISSUE 2**

Subsequent to the termination of appellant's medical benefits, she submitted Dr. Auburn's treatment notes for the period May 24, 2004 through January 20, 2005 and reports dated March 12, 2004 and January 15, 2005. She also submitted a report from Dr. Greene dated August 15, 2005.

Dr. Auburn's treatment notes for the period May 24, 2004 through January 20, 2005 reflect numerous diagnoses, including myositis, heavy metal toxicity, somatic dysfunction and acute lumbar and cervical strains resulting from an injury sustained when appellant fell delivering express mail on May 21, 2004. On January 6, 2005 she stated that she treated appellant for the "late effects of acute lumbar and cervical strains from [a] work injury." As none of Dr. Auburn's notes specifically address the relationship between appellant's diagnosed condition and the September 11, 2000 injury, they are irrelevant and lack probative value to establish that she had continuing disability causally related to the accepted injury. In a March 12, 2004 letter, Dr. Auburn opined that appellant was experiencing chronic pain and musculoskeletal problems secondary to a series of numerous work-related injuries and stated that "this condition simply did not exist before the series of injuries from July 12, 1999 to September 11, 2000." This report lacks probative value on several counts. First, the fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>18</sup> Dr. Auburn's opinion is vague in that it does not specifically identify the September 11, 2000 employment injury as the cause of appellant's diagnosed condition and is unsupported by medical reasoning. Her January 15, 2005 report also lacks probative value, in that it does not contain an opinion regarding the causal relationship between her diagnosed condition and the accepted September 11, 2000 work injury. Rather, Dr. Auburn referred to an alleged May 21, 2004 work injury which she stated "aggravated appellant's preexisting musculoskeletal condition that was induced by other work injuries." Absent a rationalized explanation, her implication of a causal relationship between appellant's current condition and "other work injuries" is not probative. Finally, Dr. Greene's August 16, 2005 report offers no probative medical evidence on the issue at hand. Although he indicated that he had reviewed appellant's medical file and the statement of accepted facts, Dr. Greene did not offer an opinion regarding a causal relationship between the accepted September 11, 2000

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<sup>16</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>17</sup> *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>18</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

injury and her current condition. Although Dr. Greene reported that appellant's May 2004 injury had resolved, he did not offer rationalized medical opinion related to her condition after March 20, 2004 to the September 11, 2000 injury.

As noted above, none of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between her current condition and her accepted work-related injury of September 11, 2000. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.<sup>19</sup> Therefore, the reports from Dr. Greene and Dr. Auburn are insufficient to overcome that of Dr. Holda or to create a new medical conflict.<sup>20</sup> The Board finds that appellant has failed to establish the presence of any continuing residuals subsequent to March 30, 2004 causally related to the accepted injury.

### **CONCLUSION**

The Board finds that the Office properly terminated medical benefits for appellant's accepted lumbosacral strain effective March 30, 2004 on the grounds that she had no further residuals due to that condition. The Board also finds that she had no residuals on or after March 30, 2004 causally related to her September 11, 2004 employment injury.

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<sup>19</sup> *Franklin D. Haislah, supra* note 7. *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>20</sup> *See Howard Y. Miyashiro*, 51 ECAB 253 (1999); *Dorothy Sidwell*, 41 ECAB 857 (1990).



**ORDER**

**IT IS HEREBY ORDERED THAT** the March 22, 2006 and September 13, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 27, 2006  
Washington, DC

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

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

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