

FACTUAL HISTORY

On March 5, 1975 appellant, then a thirty-one-year-old nursing assistant, filed a traumatic injury claim alleging that on February 9, 1975 she experienced pain in her back and neck after turning a patient. She stopped work on February 15, 1975 and returned to work on February 17, 1975. Appellant filed a second traumatic injury claim on February 9, 1976. She alleged that she developed back pain when assisting a patient to sit up in bed. The Office accepted appellant's claim for chronic lumbosacral strain with radiculopathy and entered appellant on the periodic rolls on September 24, 1976. By decision dated August 20, 1979, the Office denied appellant's claim for continuing compensation beyond September 13, 1979. It vacated this decision on March 26, 1982 and retroactively reinstated appellant's compensation benefits for temporary total disability on December 28, 1982.

Appellant returned to work as a part-time floral designer on July 15, 1983. The Office issued a loss of wage-earning capacity determination on August 15, 1983 based on her actual earnings.

Appellant's attending physician, Dr. Cecil H. Neville, Jr., a Board-certified orthopedic surgeon, completed a report on February 17, 1999 and diagnosed degenerative disc disease at L5-S1 with radiculopathy. He opined that appellant was totally disabled. In a letter dated June 12, 2000, the Office requested that appellant provide medical records in support of her continued disability. Appellant submitted a form report completed by a physician's assistant.

The Office requested additional medical information by letter dated December 6, 2004. Appellant submitted a form report dated January 6, 2005 completed by a physician's assistant. By letter dated June 27, 2005, the Office requested that appellant provide a detailed narrative medical report addressing her current condition. Appellant submitted a form report completed by a physician's assistant dated July 6, 2005.

The Office referred appellant for a second opinion evaluation with Dr. Donald Getz, a Board-certified orthopedic surgeon, to determine if she continued to experience residuals of her 1976 employment injury. Dr. Getz examined appellant on February 23, 2006. He noted her history of injury and accepted condition. Dr. Getz also noted that appellant experienced the additional conditions of asthma and exogenous obesity. He examined her, noting that appellant had waddling gait consistent with her body habitus of massive exogenous obesity that she could not walk on her toes, but could walk on her heels for a few steps. Dr. Getz found that appellant could bend to her knees with difficulty and had difficulty standing and rising from a chair. Appellant's reflexes were equal and hypoactive. He diagnosed massive exogenous obesity, degenerative disease with osteoarthritis of the spine and degenerative arthritis of the knees. Dr. Getz stated, "In my opinion any disability associated with [appellant's] original injury of February 9, 1976 has ceased and has been replaced by progressive spinal osteoarthritis associated and caused by her exogenous obesity." He noted that appellant was disabled due to her knee condition which was not related to her original injury. Dr. Getz opined that appellant was unemployable due to her multiple obesity-related problems.

The Office requested additional medical evidence from appellant's attending physician regarding her current conditions on October 6, 2006.

In a letter dated January 29, 2007, the Office proposed to terminate appellant's compensation and medical benefits. It noted that Dr. Getz found that appellant was no longer disabled due to her employment-related conditions and suffered no residuals of those conditions. The Office informed appellant that a physician's assistant was not considered a physician under the Act. The Office allowed her 30 days to submit additional medical evidence.

In a letter dated February 12, 2007, appellant alleged that her employment-related condition had worsened. She stated that Dr. Getz did not provide a through examination.

By decision dated March 9, 2007, the Office terminated appellant's compensation and medical benefits effective March 18, 2007 finding that the weight of the medical evidence as represented by Dr. Getz's report established that her disability or residuals related to her 1976 employment injury had ceased.

Appellant submitted an appeals request form on April 2, 2007 initiated by the right to request reconsideration. By decision dated April 6, 2007, the Office declined to reopen appellant's claim for consideration of the merits as she failed to submit any information or evidence in support of the request.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.² The Office's burden of proof in termination compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement of disability. To terminate authorization for medical treatment the Office must establish that a claimant no longer has residuals of an employment-related condition which require further medical treatment.⁴

ANALYSIS -- ISSUE 1

The Office accepted appellant's 1976 claim for chronic lumbosacral strain with radiculopathy. Appellant returned to part-time light-duty work and the Office reduced her compensation benefits to reflect her wage-earning capacity. The most recent medical report from appellant's physician is dated 1999, from Dr. Neville, diagnosing degenerative disc disease with radiculopathy. Although he opined that appellant was totally disabled, Dr. Neville did not provide an opinion attributing her disability to her accepted employment injury of chronic lumbosacral strain with radiculopathy.

¹ *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

² *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

³ *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001).

⁴ *Mary A. Lowe*, *supra*, note 2.

The Office requested additional medical reports supporting appellant's continued partial disability beginning in 2000. Appellant did not submit any medical evidence addressing her condition after this date. She did submit form reports completed by a physician's assistant in 2000, January and July 2005. The definition of "physician" found in section 8101(2) of the Act, does not include physician's assistants.⁵ It is well established that, to constitute competent medical opinion evidence, the medical evidence submitted must be signed by a qualified physician.⁶ Therefore, these reports do not constitute medical evidence and are not competent to support appellant's claim for continuing disability and medical residuals related to her accepted employment injury.

Due to the lack of recent medical evidence in the record and after repeated requests for updated medical reports, the Office referred her to Dr. Getz, a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. Getz noted appellant's history of injury, medical history and provided findings on physical examination. He concluded that she had no continuing disability or residuals to her accepted condition of chronic lumbosacral strain with radiculopathy. Dr. Getz attributed appellant's current disability and medical conditions to her obesity and resulting osteoarthritis of the spine and knees. He opined that these conditions were not employment related. The Board finds that the weight of the medical evidence is represented by Dr. Getz. His report is thorough and well reasoned and clearly opined that appellant's current conditions and disability were not related to her accepted back strain, but instead due to osteoarthritis which was attributable to her obesity. The Office has met its burden of proof to terminate appellant's compensation and medical benefits.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁷ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁸ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁹

⁵ 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551, 554 (2002). Therefore, the reports from a physician's assistant are entitled to no weight under the Act. *Id.*

⁶ *Vickey C. Randall*, 51 ECAB 357, 360 (2000); *Arnold A. Alley*, 44 ECAB 912, 921 (1993). *Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁷ 5 U.S.C. §§ 8101-8193, § 8128(a).

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ 20 C.F.R. § 10.608(b).

ANALYSIS -- ISSUE 2

Appellant requested reconsideration on April 2, 2007 but did not provide any documentation or narrative in support of her request. As she did not provide any evidence or argument in support of her reconsideration request, the Office properly denied her application for reconsideration without reopening the case for review of the merits.

CONCLUSION

The Board finds that the medical evidence establishes that appellant has no continuing disability or medical residuals and that therefore the Office properly terminated her compensation and medical benefits effective March 18, 2007. The Board further finds that the Office properly declined to reopen appellant's claim for consideration of the merits on April 6, 2007.

ORDER

IT IS HEREBY ORDERED THAT the April 6 and March 9, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 21, 2007
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