

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

E.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Detroit, MI, Employer**

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**Docket No. 10-1680
Issued: April 6, 2011**

Appearances:

Paul H. Kullen, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge

COLLEEN DUFFY KIKO, Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 9, 2010 appellant filed a timely appeal from an April 8, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits on December 16, 2003 on the grounds that she had no residuals of an August 10, 2001 employment injury; and (2) whether appellant established that she had any continuing employment-related disability or condition after that date due to her accepted conditions.

On appeal, her attorney asserts that the medical evidence establishes that appellant continues to be disabled due to her employment injuries.

FACTUAL HISTORY

On August 10, 2001 appellant, then a 37-year-old city carrier, filed a traumatic injury claim, alleging that she injured her head, neck and chest and had blurred vision when the airbag in her postal vehicle deployed that day. She stopped work on August 15, 2001. On September 4, 2001 the Office accepted that appellant sustained an employment-related cervical strain. An October 7, 2001 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated minor spondylosis from C3 to C7 with minor spurring and/or disc bulging without effect on the spinal cord and without spinal stenosis or neural foraminal narrowing. An MRI scan of the lumbar spine on October 17, 2001 was unremarkable and an October 17, 2001 MRI scan of the left shoulder demonstrated a possible rotator cuff tear. The Office subsequently accepted the conditions of thoracic, lumbar and bilateral shoulder strains.

On January 14, 2002 the Office referred appellant to Dr. Normal L. Pollak, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a February 6, 2002 report, Dr. Pollak noted that she presented wearing a back support, cervical collar and bilateral wrist splints. He described the history of injury and appellant's complaints of burning neck and back pain and wrist pain and numbness, provided physical examination findings and advised that there were no objective findings to support her complaints. Dr. Pollak concluded that she was not disabled from work and had no sequelae of the August 10, 2001 employment injury.

In reports dated from August 27, 2001 to June 28, 2002, Dr. Salahuddin S. Ahmad, an attending neurologist, diagnosed cervical, lumbar radiculopathy; shoulder tendinitis; and carpal tunnel syndrome due to the employment injury. He advised that appellant was totally disabled.¹ Appellant returned to modified duty for one day, April 1, 2002 and did not return.

The Office determined that a conflict of opinion had been created between the opinions of Dr. Ahmad and Dr. Pollak regarding whether appellant continued to suffer residuals of the employment injury and whether she was totally disabled and on July 12, 2002 referred her to Dr. Scott T. Monson, a Board-certified orthopedist and impartial medical specialist. In an August 8, 2002 report, Dr. Monson described the history of injury and her complaint of neck pain. He advised that appellant wore a soft collar, a lumbosacral corset and wrist splints, walked with a very stiff posture and moved her body minimally. Examination of the upper extremities demonstrated functional radial, ulnar and median nerves, negative Tinel's and Phalen's tests and no atrophy in either upper extremity. Appellant was able to toe and heel walk and the Trendelenberg test was negative bilaterally, with negative sitting straight-leg raising. X-rays of the cervical, thoracic and lumbar spine revealed degenerative changes throughout. Dr. Monson noted that appellant had a year of physical therapy and that sprains and strains resolve within six weeks in the vast majority of people and do not last indefinitely. He advised that there was no evidence at the time of his examination of an objective cause for the duration and degree of her many complaints and recommended a Minnesota Multiphasic Personality Inventory (MMPI) test to check and see if there were nonorganic causes. Dr. Monson concluded that any strain or sprain of the neck, back or shoulders from the employment injury would have resolved.

¹ In January 2002, appellant brought a third-part suit against the city of Detroit.

Dr. Ahmad referred appellant to Dr. Bradley D. Sewick, a licensed neuropsychologist, for neuropsychological evaluation. In an August 29, 2002 report, Dr. Sewick noted that since the August 10, 2001 accident appellant had mood swings, sleep disturbance, distractibility, memory difficulties and problems with concentration. He performed psychological testing, including the MMPI and advised that her neuropsychological test performance fell well within the organically impaired range and that emotional-behavioral symptoms could be adversely affecting her cognitive performance with some element of conscious or unconscious symptom enhancement, noting that she appeared to be quite enmeshed in her symptoms. Dr. Sewick's diagnostic impression was postconcussion syndrome and post-traumatic stress disorder symptoms associated with history of job stress in 1997 and the August 10, 2001 employment injury.²

Dr. William Gonte, a Board-certified internist, performed a fitness-for-duty evaluation on September 16, 2002. He noted that appellant came to the examination wearing a cervical collar, bilateral wrist splints and a lumbar wrap and reported her complaints of lower back and neck pain, headaches and pain and numbness in the hands and fingers. Dr. Gonte described the history of injury, performed physical examination and diagnosed complaints of lower back pain, neck pain and bilateral hand pain and numbness. He advised that appellant had no objective evidence of cervical or lumbar radiculopathy and no clinical objective evidence of any carpal tunnel syndrome, noting a lot of inconsistencies during her examination and that her complaints of pain seemed to be far out of proportion with any physical findings. Dr. Gonte concluded that there was no objective evidence that would prohibit her from returning to her usual work activities without restrictions, no objective evidence of any residual from any work-related injury and that no further diagnostic testing or treatment was necessary.

On October 30, 2002 the Office referred appellant to Clifford F. Furgison, a licensed neuropsychologist, for a second opinion evaluation. In a December 16, 2002 report, Dr. Furgison reported the history of injury and results of psychological testing. He advised that, based on objective psychological testing, there was considerable evidence of symptom exaggeration, if not outright malingering and that due to this, appellant's true psychological status could not be established. Dr. Furgison stated that, based on his observations, she needed no treatment or work restrictions from a psychological perspective and could perform her usual job.

The Office determined that a conflict of medical opinion had been created between the opinions of Dr. Sewick and Dr. Furgison regarding whether Dr. Sewick's diagnoses of postconcussion syndrome and post-traumatic stress disorder were causally related to the August 10, 2001 employment injury or other employment factors, whether appellant's accepted conditions had resolved and whether she continued to be disabled. On August 7, 2003 it referred her to Dr. Elliot Wagenheim, Board-certified in psychiatry and forensic psychiatry, for an impartial evaluation. In a September 8, 2003 report, Dr. Wagenheim noted his review of the medical record. He stated that appellant was wearing a cervical collar and carried a cane in her right hand but did not use it for weight bearing. Dr. Wagenheim described her report of the history of injury and complaint that since the employment injury, she had numerous physical

² Appellant reported a lawsuit for sexual harassment in 1997, while employed by the Detroit Board of Education, that was resolved in 1999.

problems, was depressed and had memory deficits. He advised that mental status examination demonstrated that appellant attempted to feign a memory deficit. Dr. Wagenheim advised that the fact that she showed no improvement and, in fact, reported that her condition had worsened, was uncharacteristic of a bona fide physical, cognitive or emotional problem and was not consistent with significant neural trauma and that, at most, she suffered a mild concussion on August 10, 2001. He stated that appellant did not meet the requirements for a diagnosis of post-traumatic stress disorder, noting that her symptoms were disproportional to the employment injury and had more to do with her underlying personality, noting that there was ample evidence of her propensity for exaggeration and that her objective behavior was not consistent with her reported symptoms. Dr. Wagenheim diagnosed factitious disorder with combined psychological and physical signs and symptoms; possible malingering; personality disorder, not otherwise specified; and problems within the primary support group and work environment. He concluded that it was unlikely appellant would return to work because she was enmeshed in her symptoms.

Dr. Ahmad continued to submit reports reiterating his diagnoses and advising that appellant was totally disabled.

On October 20, 2003 the Office proposed to terminate appellant's compensation benefits on the grounds that the medical evidence established that her work-related conditions had resolved. Appellant disagreed with the proposed termination, asserting that she had continuing excruciating shoulder, neck and back pain, complications with her eyes, headaches and pain and numbness in both hands. She submitted reports dated October 27 and November 6, 2003, in which Dr. Ahmad provided examination findings, diagnosed cervical radiculitis, shoulder tendinitis and carpal tunnel syndrome caused by the August 10, 2001 employment injury and advised that she was totally disabled.

The employing establishment submitted an investigative memorandum dated October 27, 2003. The report noted that appellant was observed during the period of October 2002 through September 2003, driving, walking, sitting, bending and visiting an amusement park for two days in July 2003 when she rode some of the park's rides. The memorandum also noted that she was awarded \$60,000.00 in a third-party settlement by the City of Detroit. The report concluded that during surveillance appellant was observed active and mobile without any appearance of pain or favoring of any kind, that she gave every indication of being a healthy, fit individual and she was not observed wearing a neck collar or wrist splints while under surveillance. The employing establishment attached a September 12, 2002 evaluation by Dr. Lucius C. Tripp, Board-certified in occupational medicine, done for the City of Detroit regarding appellant's third-party suit.³ He noted that appellant appeared wearing a soft neck collar, splints on both wrists and a soft lumbosacral support and was generally uncooperative with the examination. Dr. Tripp advised that based on the history, physical examination and review of medical records, she experienced a simple myofascial strain without permanent aggravation. He noted symptom magnification and advised that, on the basis of normal neurological and muscular examinations with no signs of atrophy and normal neurosensory examination, appellant could return to her normal occupational duties without

³ *Supra* note 1.

restrictions and did not require further medical treatment due to the August 10, 2001 employment injury.

By decision dated December 16, 2003, the Office finalized the termination. It found that the weight of the medical evidence rested with the opinions of Drs. Monson and Wagenheim, who performed referee examinations. On December 31, 2003 appellant requested a hearing, that was held on January 28, 2004. She described her daily activity and testified that she continued to have back, neck, wrist and hand pain that increased with activity. Appellant submitted reports from Dr. Ahmad dated December 21, 2003 and February 2, 2004, in which he reiterated his findings and conclusions. In an August 10, 2004 report, Dr. Ahmad advised that her condition had not improved despite extensive medical treatment and rehabilitation and that she remained totally disabled.

In reports dated June 17 and July 22, 2004, Dr. James E. Beale, Jr., an orthopedic surgeon, advised that he began treating appellant on March 31, 2004 for chronic cervical and lumbar sprain, cervical neuropathy, sciatica and carpal tunnel syndrome, due to an August 10, 2001 employment injury. He noted that her gait pattern was slow and guarded and that examination demonstrated tenderness along the cervical and lumbar spines, both shoulders and wrists with diminished range of motion of the cervical and lumbar spines. Grip strength was diminished in both hands and the sensory examination was positive for carpal tunnel syndrome. Dr. Beale reported electromyography (EMG) findings of bilateral carpal tunnel syndrome and cervical spine MRI scan findings of disc bulging at C5-6 and C6-7. MRI scan studies of the lumbar spine and right shoulder were normal, with the left shoulder showing minimal tendinosis of the supraspinatus tendon. Dr. Beale opined that, since appellant had no injuries prior to August 10, 2001, her injuries were do to the employment injury and advised that she was totally disabled. In a June 25, 2004, Dr. Lily Tencza, a Board-certified psychiatrist, advised that appellant had been under her psychiatric care since June 11, 2004. She noted appellant's report that she had suffered depression since the 2001 employment injury and diagnosed major depressive disorder.

By decision dated November 5, 2004, an Office hearing representative found that the weight of the medical evidence rested with the opinions of Drs. Monson and Wagenheim, who performed impartial evaluations and affirmed the December 16, 2003 decision. On October 25, 2005 appellant requested reconsideration and submitted emergency department discharge instructions dated November 15, 2004, noting that she was treated by a Dr. Robert Malinowski. In reports dated December 7 and 14, 2004, Dr. Ahmad noted that she was in a motor vehicle accident on November 15, 2004. He provided examination findings including reduced cervical and lumbosacral range of motion, diagnosed cervical and lumbar radiculitis and closed head injury. Dr. Ahmad advised that appellant's symptoms first appeared on November 15, 2004, that she was totally disabled and needed assistance in activities of daily living. A January 17, 2005 MRI scan of the lumbar spine was normal and an MRI scan of the cervical spine demonstrated minor mid-cervical spondylosis with no other visualized abnormalities. Dr. Ahmad reported that a February 9, 2005 lower extremity nerve conduction study (NCS) was normal and that lower extremity EMG demonstrated bilateral L4-5 lumbar radiculopathies. Upper extremity EMG and NCS were reported as demonstrating bilateral C5-6 cervical radiculopathies and bilateral median mononeuropathies carpal tunnel syndrome at the wrists. In additional reports dated from January 17 to July 20, 2005, Dr. Ahmad reported the date of injury as November 15, 2004 and

reiterated his diagnoses and conclusions. On November 17, 2004 Dr. Beale reported that appellant's vehicle had been rear-ended and that she had complaints of neck and upper back pain and headaches. He submitted form treatment notes dated until September 7, 2005 when he advised that her examination was unchanged.⁴

In a merit decision dated January 23, 2006, the Office denied modification of the prior decisions. On January 22, 2007 appellant requested reconsideration and submitted a January 16, 2007 report in which Dr. Ahmad noted treating her since August 27, 2001. Dr. Ahmad described her subsequent treatment and reported the February 2005 EMG findings. He advised that, while the November 15, 2004 motor vehicle accident aggravated appellant's neck and back pains and caused severe headaches, the symptoms were a direct consequence of the August 10, 2001 employment injury. In a January 18, 2007 report, Dr. Beale noted that he had seen appellant monthly since March 31, 2004. He described his treatment regimen and noted that on November 16, 2004 she was in a motor vehicle accident and treated for injuries to the head, neck, upper and lower back. Dr. Beale concluded that all appellant's injuries were the result of the August 10, 2001 employment injury and that the November 16, 2004 accident aggravated the preexisting injuries. He advised that she had shown little change in the interim with slow and guarded movements and decreased range of motion of the cervical spine and tenderness on examination and concluded that she was totally disabled.

By decision dated February 21, 2007, the Office denied modification of the prior decisions. On June 25, 2007 appellant requested reconsideration and submitted a May 11, 2007 report in which Dr. Ahmad diagnosed cervical strain, radiculitis; thoracic strain, radiculitis; lumbar strain, radiculitis; bilateral shoulder strain, impingement syndrome; and head injury with headache. Dr. Ahmad noted physical findings of spasms in appellant's neck and back muscles and opined that the diagnosed conditions were a direct result of the August 10, 2001 accident that were subsequently aggravated by the November 15, 2004 motor vehicle accident which had worsened her condition, as shown by EMG studies. He concluded that she needed further evaluation and studies and remained totally disabled. By decision dated September 7, 2007, the Office again denied modification of the prior decisions.

On October 17, 2007 appellant, through her attorney, filed an appeal with the Board. By order dated July 21, 2008, the Board noted that on March 12, 2008 it ordered the Office to deliver the case record within 30 days and it had not done so. The Board remanded the case to the Office for reconstruction and proper assemblage of the case record, to be followed by an appropriate decision to fully protect appellant's appeal rights.⁵ By letter dated March 29, 2010, appellant's attorney asked the Office to comply with the Board's order. In a merit decision dated April 8, 2010, the Office denied modification of the prior decisions.⁶

⁴ The majority of the writing on the reports is illegible.

⁵ Docket No. 08-177 (issued July 21, 2008).

⁶ A review of the August 8, 2010 decision indicates that the Office reissued the September 7, 2007 decision.

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. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁷ 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.⁸

Section 8123(a) of the Federal Employees' Compensation Act⁹ provides 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.¹⁰ When the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹¹

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits on December 16, 2003. The accepted conditions in this case are cervical, thoracic, lumbar and bilateral shoulder strains caused by an August 10, 2001 employment injury when the airbag in her postal vehicle deployed. The Office determined that a conflict in medical evidence had been created between the opinions of Dr. Ahmad, an attending physician, and Dr. Pollak, an Office referral physician, regarding whether appellant continued to suffer residuals of the employment injury and as to the extent of any disability. It then properly referred her to Dr. Monson, Board-certified in orthopedic surgery, for an impartial evaluation.

In a thorough August 8, 2002 report, Dr. Monson described the history of injury and appellant's complaints. He noted that physical examination of the upper extremities demonstrated functional radial, ulnar and median nerves, negative Tinel's and Phalen's tests and no atrophy in either upper extremity. Appellant was able to toe and heel walk and the Trendelenberg test was negative bilaterally, with negative sitting straight-leg raising. Dr. Monson advised that sprains and strains resolve within six weeks in the vast majority of people and do not last indefinitely and that there was no evidence at the time of his examination of an objective cause for the duration and degree of appellant's many complaints. He concluded that any strain or sprain of the neck, back or shoulders from the employment injury would have resolved.

⁷ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁸ *Id.*

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ *Id.* at § 8123(a); see *Geraldine Foster*, 54 ECAB 435 (2003).

¹¹ *Manuel Gill*, 52 ECAB 282 (2001).

The Board finds that, as Dr. Monson provided a comprehensive, well-rationalized opinion in which he clearly advised that any residuals of appellant's accepted conditions had resolved, his opinion is entitled to the special weight accorded an impartial examiner and constitutes the weight of the medical evidence.¹²

Dr. Monson's opinion is also supported by that of Dr. Gonte, who provided a fitness-for-duty examination for the employing establishment on September 16, 2002. He advised that appellant had no objective evidence of cervical or lumbar radiculopathy and no clinical objective evidence of any carpal tunnel syndrome, reporting that she had numerous inconsistencies during her examination and that her complaints of pain seemed to be far out of proportion with any physical findings. Dr. Gonte concluded that there was no objective evidence that would prohibit appellant from returning to her usual work activities without restrictions, no objective evidence of any residual from any work-related injury and that no further diagnostic testing or treatment was necessary.

Likewise, in an examination done for appellant's third-party claim against the City of Detroit, in a September 12, 2002 evaluation, Dr. Tripp advised that based on the history, physical examination and review of medical records, appellant experienced a simple myofascial strain on August 10, 2001 without permanent aggravation. He noted symptom magnification and advised that, on the basis of normal neurological and muscular examinations with no signs of atrophy and normal neurosensory examination, appellant could return to her regular work duties without restrictions and did not require further medical treatment due to the August 10, 2001 employment injury.

The medical evidence appellant subsequently submitted is insufficient to overcome the weight accorded Dr. Monson as an impartial medical specialist regarding whether she had residuals of her accepted conditions. In his numerous reports, Dr. Ahmad essentially reiterated his findings and conclusion that she continued to be disabled from the employment injury and the Board has long held that reports from a physician who was on one side of a medical conflict that an impartial specialist resolved, are generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict.¹³ He had been on one side of the conflict resolved by Dr. Monson. Furthermore, Dr. Ahmad did not explain why the accepted strains caused continuing disability and the conditions he diagnosed, cervical and lumbar radiculitis, closed head injury and carpal tunnel syndrome, have not been accepted as employment related.

Dr. Beale's reports are also insufficient to overcome the weight of Dr. Monson's opinion. He first saw appellant in June 2004, almost three years after the employment injury. While Dr. Beale diagnosed chronic cervical and lumbar sprain, cervical neuropathy, sciatica and carpal tunnel syndrome due to the August 10, 2001 employment injury, he merely stated that she was injured in a motor vehicle accident on August 10, 2001 but did not describe the accident in any way. It is well established that to be of probative value a medical opinion must be based on a

¹² See *Sharyn D. Bannick*, 54 ECAB 537 (2003).

¹³ *I.J.*, 59 ECAB 408 (2008).

complete and accurate factual and medical background and where, as here, a medical opinion is based on an incomplete or inaccurate history, it is of diminished probative value.¹⁴

An emotional condition has not been accepted as employment related. The Office determined that a conflict in medical evidence had been created between the opinions of neuropsychologists Drs. Sewick and Furgison, regarding whether the diagnoses of postconcussion syndrome and post-traumatic stress disorder were causally related to the August 10, 2001 employment injury or other employment factors and referred appellant to Dr. Wagenheim, a Board-certified psychiatrist, for an impartial opinion. In a September 3, 2003 report, Dr. Wagenheim noted his review of the medical record. He stated that appellant was wearing a cervical collar and carried a cane in her right hand but did not use it for weight bearing. Dr. Wagenheim described her report of the history of injury and complaint that since the employment injury, she had numerous physical problems, was depressed and had memory deficits. He advised that mental status examination demonstrated that appellant attempted to feign a memory deficit and the fact that she showed no improvement and, instead, reported that her condition had worsened, was uncharacteristic of a bona fide physical, cognitive or emotional problem and was not consistent with significant neural trauma. Dr. Wagenheim stated that, at most, she suffered a mild concussion on August 10, 2001 and that she did not meet the requirements for a diagnosis of post-traumatic stress disorder, noting that her symptoms were disproportional to the employment injury and had more to do with her underlying personality, noting that there was ample evidence of her propensity for exaggeration and that her objective behavior was not consistent with her reported symptoms. He diagnosed factitious disorder with combined psychological and physical signs and symptoms; possible malingering; personality disorder, not otherwise specified; and problems within the primary support group and work environment. Dr. Wagenheim concluded that it was unlikely she would return to work because she was enmeshed in her symptoms.

Dr. Tencza, who diagnosed a major depressive disorder, merely reported that appellant had been under her care since June 2004 and had suffered depression since a 2001 employment injury. She did not provide a rationalized explanation as she did not discuss the nature of the diagnosed condition or soundly explain to a reasonable degree of medical certainty how the August 10, 2001 employment injury or the accepted orthopedic conditions caused appellant's depressive disorder.¹⁵

The Board therefore concludes that Dr. Monson's opinion that residuals of appellant's accepted conditions had ceased is entitled to the special weight accorded an impartial medical examiner¹⁶ and the additional reports from Dr. Ahmad and Dr. Beale are insufficient to overcome the weight accorded him as an impartial medical specialist regarding whether appellant had residuals of her accepted orthopedic conditions. The opinion of Dr. Wagenheim is also accorded special weight as the referee physician in regard to whether the August 10, 2001

¹⁴ *L.G.*, Docket No. 09-1692 (issued August 11, 2010).

¹⁵ *J.M.*, 58 ECAB 303 (2007).

¹⁶ See *Sharyn D. Bannick*, *supra* note 12.

employment injury caused an emotional condition. The Office therefore properly terminated appellant's compensation benefits on December 16, 2003.¹⁷

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits on December 16, 2003, the burden shifted to her to establish that she had any continuing disability causally related to her accepted right upper extremity injury.¹⁸ 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.¹⁹ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.²⁰ 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.²¹

ANALYSIS -- ISSUE 2

The Board finds that appellant submitted insufficient medical evidence with her October 25, 2005, January 22 and June 25, 2007 reconsideration requests to establish that she continued to be disabled after December 16, 2003.

The MRI scan studies are insufficient to meet appellant's burden as they contain no opinion as to the cause of the diagnosed conditions and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.²² Likewise, the medical reports submitted by appellant with her reconsideration requests do not establish that she continued to be disabled after December 16, 2003 due to the accepted cervical, thoracic, lumbar and shoulder strains.

Appellant was involved in a nonemployment-related motor vehicle accident on November 15, 2004 when her vehicle was rear-ended. In reports dated December 7, 2004 to July 20, 2005, Dr. Ahmad diagnosed cervical and lumbar radiculitis and closed head injury due to the November 15, 2004 motor vehicle accident. It was not until a report dated January 16,

¹⁷ *Manuel Gill, supra* note 11.

¹⁸ *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

¹⁹ *Jennifer Atkerson*, 55 ECAB 317 (2004).

²⁰ *Id.*

²¹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

²² *Willie M. Miller*, 53 ECAB 697 (2002).

2007, that he advised that the November 15, 2004 motor vehicle accident merely aggravated appellant's neck and back pains and caused severe headaches and that these diagnoses were directly caused by the August 10, 2001 employment injury. Similarly, in reports dated November 17, 2004 to December 7, 2005, Dr. Beale reported a history that appellant had been in a motor vehicle accident on November 15, 2004 and diagnosed cervical, dorsal and lumbosacral sprains. He too did not advise until January 18, 2007 that all of appellant's injuries were directly caused by the August 10, 2001 employment injury.

The Board finds the opinions of Dr. Ahmad and Dr. Beale of diminished probative value because their reports do not contain sound medical reasoning establishing that appellant was totally disabled after December 16, 2003 due to the accepted strains caused by the August 10, 2001 employment injury.²³ Pain is a symptom, not a compensable medical diagnosis²⁴ and a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.²⁵ Neither physician explained the mechanics of why the August 10, 2001 employment injury when appellant's airbag deployed when she drove into a pothole caused continuing disability after December 16, 2003, especially in light of the intervening motor vehicle accident that occurred on November 15, 2004 and thus entitled to little probative value and are insufficient to meet an employee's burden of proof to establish that she continues to have work-related disability due to the accepted conditions.²⁶

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits on December 16, 2003 on the grounds that she had no residuals of an accepted conditions and that she did not establish that she had any continuing employment-related disability or condition after that date causally related to the August 10, 2001 work injury.

²³ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

²⁴ *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

²⁵ *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

²⁶ *S.S.*, 59 ECAB 315 (2008).

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 6, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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