

she stopped work in mid-2001 and did not return. Appellant received compensation on the daily rolls and appropriate medical benefits. Her case was placed on the periodic rolls in August 2001.

Appellant submitted periodic reports from May 29, 1996 through 2000 from Dr. Edward N. Feldman, an attending orthopedic surgeon. He diagnosed acute cervical, lumbar and thoracic strains and right hip synovitis and limited her to light-duty work.¹ In a March 29, 2001 report, Dr. Feldman found paralumbar muscle spasm, bilaterally positive straight leg raising tests and hypoesthesia in the L5-S1 dermatome. He diagnosed a herniated L4-5 disc, a bulging L3-4 disc, cervical radiculopathy, chronic lumbosacral strain and symptomatic cervical spondylosis. Dr. Feldman opined that appellant's "objective findings and subjective complaints [were] related to the accident on the job of May 21, 1996 and [were] permanent." He opined that she could continue performing light-duty work. In a June 28 and July 17, 2001 reports, Dr. Feldman diagnosed a herniated L5-S1 disc, "[d]epression secondary to chronic pain," old fractures of the eighth and ninth ribs, "[j]ob-related stress disorder." He found appellant totally disabled for work.

In a September 13, 2001 report, Dr. Antonio Castellvi, an attending Board-certified orthopedic surgeon, noted lumbar spasm and a normal neurologic examination. He stated that a May 11, 2001 lumbar magnetic resonance imaging (MRI) scan showed a herniated disc at L5-S1 with mild degenerative disc bulging at L3-4 and L4-5.

To determine the nature and extent of continuing work-related disability, the Office referred appellant for a second opinion evaluation by Dr. Michael Slomka, a Board-certified orthopedic surgeon. In a September 20, 2001 report, he noted that she had significant low back problems with "degenerative changes, disc herniation and multiple bulges and areas of desiccation which are related to her accident of 1996" and preexisting musculoskeletal problems complicated by psychiatric illness. In a September 20, 2001 work capacity evaluation, Dr. Slomka opined that appellant could perform limited-duty work for four hours a day. In a September 28, 2001 addendum, he opined that the August 11, 1998 rib fractures would not prevent her from working as a letter carrier. On October 18, 2001 Dr. Slomka found no objective signs of the accepted cervical, thoracic or lumbar strains or right hip synovitis. He characterized the May 21, 1996 incident as an "auto[mobile] accident" which aggravated 'preexisting factors.' Dr. Slomka also noted a history of "multiple lifting injuries at work." He stated that he was not offering a "medical determination, but an administrative one ... based upon history rather than medical findings."

By notice dated November 19, 2001 and finalized December 19, 2001, the Office terminated appellant's compensation benefits on the grounds that her work-related disability had

¹ In a September 22, 1998 report, Dr. Jorge J. Inga, an attending Board-certified neurosurgeon, found degenerative disc disease at L3-4 and L4-5 and evidence of healed fractures of the eighth and ninth ribs. September 1998 studies also showed lumbar spondylosis at L4-5 and a bulging disc at C2-3. Dr. Inga stated that appellant evinced no focal neurologic deficit. In a January 5, 1999 report, Dr. Ralph E. Rydell, a Board-certified neurosurgeon, noted an essentially normal neurologic examination and diagnosed a protruding L4-5 disc with disc degeneration and spinal canal stenosis. Appellant also submitted a May 3, 2001 report from Dr. Gary K. Arthur, an attending Board-certified psychiatrist, regarding psychiatric conditions and bilateral carpal tunnel syndrome.

ceased. It credited Dr. Slomka's report as the weight of the medical evidence. She requested a hearing, held on June 20, 2002. Appellant asserted that Dr. Slomka's opinion was inaccurate and improperly reasoned. She submitted a June 27, 2002 report from Dr. Feldman reiterating the diagnoses contained in his July 17, 2001 report and ordering bilateral wrist splints. By decision dated September 23, 2002, an Office hearing representative remanded the case to the Office for further development, including an additional second opinion evaluation to clarify the issues raised by Dr. Slomka.

On remand of the case, the Office referred appellant, the medical record and a statement of accepted facts to Dr. Vydialinga Raghavan for a second opinion evaluation. In a November 27, 2002 report, he noted limited motion throughout the spine and pain on palpation at L4-S1 and the sacroiliac region. Dr. Raghavan observed that appellant walked with a limp on the left due to a left ankle fracture in 2000, noting an approximate one centimeter atrophy of the thigh and calf muscles on the left. He noted that the old rib fractures had resolved. Dr. Raghavan opined that an L5-S1 herniated disc was related to normal aging and not the accepted May 21, 1996 injury, stating that appellant had recovered completely from the accepted conditions. In a December 2, 2002 work capacity evaluation, he found that she had reached maximum medical improvement and could perform her date-of-injury position as a letter carrier.

The Office found a conflict of medical opinion between Dr. Feldman, for appellant and Dr. Raghavan, for the government. Appellant, together with the medical record and a statement of accepted facts were referred to Dr. Howard Schuele, a Board-certified orthopedic surgeon. He submitted a February 14, 2003 report providing a history of injury and treatment. On examination Dr. Schuele found positive straight leg raising tests at 80 degrees and limited lumbar motion with pain. He noted that appellant did not complain of pain in her ribs, cervical or thoracic spine during the examination. Dr. Schuele diagnosed a chronic lumbosacral sprain, resolved paracervical ligamentous muscle sprain and strain and resolved fractures of the eighth and ninth ribs on the right. He opined that the May 21, 1996 injuries had resolved, noting that Dr. Castellvi's September 13, 2001 examination was normal except for age-related degenerative lumbar disc disease. He stated that there was no causal relationship between the herniated discs and the accepted injury, as appellant did not evince any radiculopathy and that there was no indication that the herniated disc was causing her complaints. In a March 5, 2003 addendum, Dr. Schuele opined that appellant's age-related chronic lumbosacral sprain would cause difficulties with performing the duties of a letter carrier, in particular "climbing, bending, stooping and twisting."

By notice dated March 7, 2003, the Office proposed to terminate appellant's compensation benefits on the grounds that her work-related condition had ceased. She then submitted a February 11, 2003 report by Dr. Arthur J. Pedregal, an attending Board-certified neurologist, who noted a positive straight leg raising test on the left. He characterized appellant's lumbar problem as chronic, explaining that it was "unlikely she will have complete resolution without the need for treatment." He recommended a change in medication.

By decision dated April 9, 2003 and finalized April 10, 2003, the Office terminated appellant's compensation benefits effective April 8, 2003 on the grounds that the residuals of the accepted May 21, 1996 injuries had ceased. The Office found that Dr. Schuele's report

represented the weight of the medical evidence sufficiently rationalized to establish that the accepted conditions had resolved. The Office noted that Dr. Pedregal's report contained insufficient rationale to establish any continuing disability related to the accepted injuries.

Appellant requested an oral hearing, which was held March 10, 2004. She asserted that she had no additional injuries since May 21, 1996 and had no preexisting conditions. Appellant submitted an April 24, 2003 report from Dr. Feldman, noting paraspinal muscle spasms, exquisite tenderness to the sciatic notch on the right, hypoesthesia in the L5-S1 dermatome in the right lower extremity and "myonodular spasm with trigger point tenderness." He diagnosed a centrally herniated L5-S1 disc, lumbar radiculopathy, chronic cervical sprain and rule out herniated cervical disc. Dr. Feldman noted that appellant was beginning to develop pain radiating into an upper extremity. He recommended further studies and a transcutaneous electrical nerve stimulation (TENS) unit.

By decision dated and finalized May 3, 2004, the Office hearing representative affirmed the termination of appellant's compensation benefits. The hearing representative found that Dr. Schuele's opinion was sufficiently rationalized to represent the weight of the medical evidence and establish that the accepted conditions had resolved.²

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of modification of compensation benefits.³ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained cervical, thoracic and lumbosacral strains on May 21, 1996. She received wage-loss compensation and medical benefits based on the opinion

² Following issuance of the Office's May 3, 2004 decision, appellant submitted additional medical evidence. This evidence has not been considered by the Office. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

³ *Raymond W. Behrens*, 50 ECAB 221 (1999).

⁴ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁵ *Raymond W. Behrens*, *supra* note 3.

⁶ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁷ *John F. Glynn*, 53 ECAB ____ (Docket No. 01-1184, issued June 4, 2002).

of Dr. Feldman, an attending orthopedic surgeon. He submitted reports from 1996 through July 17, 2001, diagnosing cervical radiculopathy, cervical spondylosis, a herniated L4-5 disc, a bulging L3-4 disc and chronic lumbosacral strain related to the May 21, 1996 injuries. Dr. Felder opined that these conditions were permanent and that appellant was totally disabled for work as of June 28, 2001.

To ascertain whether appellant had residuals of her accepted injuries and assess her work capacity, the Office originally referred her to Dr. Slomka for a second opinion examination. The Office terminated her compensation benefits effective December 19, 2001, based on Dr. Slomka's report as the weight of the medical evidence. Following a June 20, 2002 hearing, an Office hearing representative remanded the case for another second opinion examination. The Office referred appellant to Dr. Raghavan, a Board-certified orthopedic surgeon, who submitted a November 27, 2002 report, finding that the accepted injuries had resolved and her condition was related to age-related degenerative disc disease.

The Office properly found a conflict of medical opinion between Dr. Feldman, for appellant and Dr. Raghavan, for the government and referred appellant to Dr. Schuele, a Board-certified orthopedic surgeon, for performance of an impartial medical evaluation.⁸ He submitted a February 14, 2003 report in which he reviewed the medical record and provided a complete and accurate history of injury and treatment. Following a thorough orthopedic examination, Dr. Schuele diagnosed a chronic lumbosacral sprain and resolved fractures of the eighth and ninth ribs. He opined that the May 21, 1996 injuries had resolved, noting that a September 13, 2001 examination by Dr. Castellvi, an attending Board-certified orthopedic surgeon, was normal except for age-related degenerative lumbar disc disease. He opined that the herniated lumbar discs were not work related as appellant did not have lumbar radiculopathy. In a March 5, 2003 addendum, Dr. Schuele explained that any work restrictions would be attributable only to age-related chronic lumbosacral sprain.

Following issuance of a March 7, 2003 notice of proposed termination, appellant submitted a February 11, 2003 report by Dr. Pedregal, an attending Board-certified neurologist, who found a positive straight leg raising test on the left and diagnosed a chronic lumbar problem. However, he did not provide medical rationale explaining how appellant's lumbar condition would be related to the May 21, 1996 injuries.

In situations where the case had been referred to an impartial medical specialist for resolution of a conflict of medical opinion, the opinion of such specialist, if sufficiently well-rationalized and based on a proper factual background, must be given special weight.⁹ The Board finds that Dr. Schuele's report is based on a proper factual background and objective findings obtained through a thorough physical examination. He provided detailed rationale to

⁸ Section 8123(a) of the Federal Employees' Compensation Act provides that, when there is a disagreement between the physician making the examination for the United States and the physician of the employee and the opposing reports are of virtually equal weight, a third physician shall be appointed to make an examination to resolve the conflict. 5 U.S.C. § 8123(a), *Delphia Y. Jackson*, 55 ECAB ___ (Docket No. 04-165, issued March 10, 2004).

⁹ *Carol S. Masden*, 54 ECAB ___ (Docket No. 02-1667, issued January 8, 2003).

support his conclusion that appellant's accepted conditions had resolved without residuals. Dr. Schuele found that the accepted strains of the cervical, thoracic and lumbosacral spine were resolved. He noted findings pertaining to a herniated disc at L5-S1, but found no connection to the 1996 accepted injury. Dr. Schuele concluded that appellant could return to duty without physical restrictions. The Office properly found in its April 10, 2003 decision, that his opinion as impartial medical examiner is entitled to the weight of the medical evidence in this case. The Board notes that the Office properly found that Dr. Pedregal's opinion was insufficiently rationalized to outweigh or conflict with Dr. Schuele's opinion.

The Board finds that the Office met its burden of proof to terminate appellant's wage-loss and medical compensation benefits as Dr. Schuele's opinion is sufficiently rationalized to establish that the accepted work-related conditions ceased without residuals requiring further medical treatment.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifted back to appellant to support her assertion of a continuing employment-related disability with probative medical evidence. In order to prevail, the claimant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.¹⁰ 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 be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific work factors identified by the claimant.¹¹

ANALYSIS -- ISSUE 2

In support of her claim for a continuing work-related disability on and after April 8, 2003, appellant submitted an April 24, 2003 report from Dr. Feldman, an attending orthopedic surgeon. He found lumbar paraspinal muscle spasms, tenderness to palpation at the sciatic notch, myofascial spasms and hypoesthesia in the L5-S1 dermatome in the right lower extremity. Dr. Feldman diagnosed a herniated L5-S1 disc with radiculopathy, chronic cervical sprain and a possible herniated cervical disc as appellant was beginning to develop pain radiating into an upper extremity. He did not provide rationale explaining how or why any of the objective findings or diagnosed conditions would be related to the May 21, 1996 injuries. Thus, his opinion is insufficient to outweigh that of Dr. Schuele, a Board-certified orthopedic surgeon and impartial medical examiner, who explained that appellant's condition was due to age-related degenerative disc disease and not work-related residuals. Also, Dr. Feldman was on one side of the conflict resolved by Dr. Schuele. Therefore, his report should not be used to outweigh that of the impartial medical specialist.¹²

¹⁰ *Id.*

¹¹ *John F. Glynn, supra note 7.*

¹² *Virginia Davis-Banks, 44 ECAB 389, 392 (1993).*

Therefore, appellant has not met her burden of proof to establish that her condition on and after April 8, 2003 was causally related to the accepted May 21, 1996 injuries. She submitted insufficient rationalized medical evidence substantiating a causal relationship between her ongoing condition and the May 21, 1996 injuries.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective April 8, 2003, on the grounds that her work-related conditions had ceased on or before that date. The Board further finds that she has not met her burden of proof in establishing that her medical condition on and after December 19, 2001 is causally related to the accepted May 21, 1996 injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 3, 2004 is affirmed.

Issued: December 17, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member