

FACTUAL HISTORY

This case is before the Board for the second time. In a decision dated September 6, 2000, the Board affirmed the Office's May 29 and February 29, 1998 decisions finding that appellant was not entitled to compensation on or after June 22, 1997 due to her accepted employment injuries of cervical strain, right shoulder strain and right hip strain.¹ The Board found that the Office met its burden of proof to terminate appellant's compensation effective June 22, 1997 based on its finding that the opinion of the Office referral physician, Dr. Gerald M. DeBonis, a Board-certified orthopedic surgeon, represented the weight of the medical evidence. The Board found that the opinion of Dr. M. Dennis Wachs, a Board-certified orthopedic surgeon and appellant's attending physician, was insufficient to support a finding of employment-related disability on or after June 22, 1997. The Board noted that Dr. Wachs attributed appellant's disability primarily to lower back problems which the Office had not accepted as causally related to her employment injury. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

In an unsigned office visit note dated October 26, 1998, Dr. Wachs noted findings on physical examination of hip, back and shoulder tenderness on the right side.

On September 29, 2000 appellant, through her attorney, filed a petition for reconsideration of the Board's September 6, 2000 decision. The attorney also submitted the petition for reconsideration to the Office.

In a decision dated January 2, 2001, the Office denied modification of the September 6, 2000 decision.² On January 31, 2001 the Board issued an order denying appellant's petition for reconsideration on the grounds that she had not established any error of law or fact.³

By letter dated November 6, 2001, appellant, through her attorney, requested reconsideration of her claim. In support of her request, appellant submitted a report dated February 9, 2001 from Dr. Wachs, who stated:

“[Appellant] has been cared for in my office by myself primarily for a problem relating to her back, her right shoulder and her right hip, all relating to an injury that she sustained as a postal worker on January 19, 1994 when she slipped on some ice and fell, injuring her right shoulder and right hip. Her care in my office since that time has been related to her right shoulder, right hip and her back problem which was a derivative injury secondary to this.”

¹ Docket No. 98-2432 (issued September 6, 2000).

² The Office's January 2, 2001 decision, issued while the Board has jurisdiction over the matter in dispute, is null and void under the principles discussed in *Douglas E. Billings*, 41 ECAB 880 (1990).

³ Docket No. 98-2432 (issued January 31, 2001).

Dr. Wachs discussed his ongoing treatment of appellant's right shoulder problems beginning with arthroscopic surgery on her right shoulder in February 1995 and manual manipulation of the right shoulder in June 1995. He stated:

“She has required care of this problem since that time with various medications including anti-inflammatory medications, pain medications and she also has required very frequent physical therapy for these problems. Her care has been ongoing and has been several times a year, generally in the neighborhood of every six weeks to three months for review in the office, for medication adjustment and for physical therapy as needed and has frequently been needed. She has not been able to return to her work that she previously did, namely the [employing establishment], because of these problems.”

By decision dated September 9, 2002, the Office denied modification of its January 2, 2001 decision. The Office noted that Dr. Wachs' February 9, 2001 report contained no objective findings.

On September 13, 2002 appellant, through her attorney, requested reconsideration of the Office's September 9, 2002 decision in a letter addressed to the Board. In a letter dated January 13, 2002, appellant's attorney informed the Board that he wished to request reconsideration before the Office. On February 6, 2003 the Board issued an order dismissing appeal on the grounds that appellant desired reconsideration before the Board.⁴

By letter dated March 25, 2003, appellant's attorney requested reconsideration and submitted a report from Dr. Wachs dated November 1, 2002. Dr. Wachs discussed appellant's history of an employment injury on January 19, 1994. He stated, “She injured her right shoulder and right hip, had pain in her left thigh, in her left knee and some pain in her lower back.” He noted that appellant underwent surgery and manual manipulation of the shoulder and that her back “continued to be a problem for her in part because of this fall and in part because of the strain imparted to her from her hip injury. She had continued difficulty requiring the sacroiliac joint, sciatic notch and greater trochanteric area to be cared for.” Dr. Wachs noted that appellant's first magnetic resonance imaging (MRI) study showed “dis[c] disease at L5-S1” and an MRI obtained on June 1999 showed “a bulging dis[c] at [L]5-[S]1 and some degenerative changes at [L]4-[L]5.” He indicated that appellant received steroid treatment for her back. Dr. Wachs concluded:

“She continues to have some difficulties right along. Her back pain was exacerbated by a motor vehicle accident in, I believe, May of 2001, which certainly did not help it, but I think that her problem is in large part related to what had already happened to her.”

By decision dated June 5, 2003, the Office denied modification of its prior merit decisions. The Office found that the opinion of Dr. Wachs was unrationalized and insufficient to overcome the weight afforded to Dr. DeBonis, the Office referral physician.

⁴ Docket No. 02-2315 (issued February 6, 2003).

On September 17, 2003 appellant, through her attorney, requested reconsideration. In support of her request, appellant submitted a report dated August 22, 2003 from Dr. Wachs, who indicated that, at the request of appellant's attorney, he had reviewed the report of Dr. DeBonis. He related:

"I frankly do not know what else I can say. I have said pretty much all that I can say regarding this situation. Obviously, there are many things that can cause back pain. Certainly, I would not argue with Dr. DeBonis' ascertainment that degenerative dis[c]s do not come about as a result of greater trochanteric bursitis, I would certainly not want to be accused of saying that. I think that she has obviously many things feeding into this back problem of hers. Degenerative dis[c] disease is multifactorial and it can be aggravated by many things, including differences in gait, [etcetera]. So, I think the bursitis certainly can aggravate the underlying dis[c] problem, but I do not know what else I can do to clarify this...."

In a decision dated December 16, 2003, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was duplicative and insufficient to warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden of proof shifts to appellant to establish that she has disability causally related to her accepted employment injury.⁵ To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.⁶

ANALYSIS -- ISSUE 1

In support of her claim, appellant submitted a report dated February 9, 2001 from Dr. Wachs, who described his treatment of appellant for problems with her back, right shoulder and right hip and attributed these problems to her January 19, 1994 employment injury.⁷ He discussed his ongoing treatment of appellant's right shoulder problem with medications and physical therapy. He stated that she could not return to her work at the employing establishment "because of these problems." However, Dr. Wachs fails to provide specific diagnoses or any objective findings in support of disability. In general, findings on examination are required to support a physician's opinion that an employee is disabled for work.⁸ Additionally, Dr. Wachs failed to explain how, with reference to the specific facts of the case, appellant's January 19,

⁵ *Manuel Gill*, 52 ECAB 282 (2001).

⁶ *Id.*

⁷ Dr. Wachs' unsigned October 26, 1998 progress note does not constitute probative medical evidence; *see Merton J. Sills*, 39 ECAB 572 (1988).

⁸ *Barry C. Petterson*, 52 ECAB 120 (2000).

1994 employment injury continued to cause disability from employment on and after June 22, 1997. As Dr. Wachs report lacks rationale, it is of little probative value.⁹

In a report dated November 1, 2002, Dr. Wachs noted that, as a result of her January 19, 1994 employment injury, appellant “injured her right shoulder, right hip, had pain in her left thigh, in her left knee and some pain in her lower back.” He stated that she continued to experience back problems caused partly by her fall at the time of her employment injury and partly from her hip strain. Dr. Wachs found that appellant’s back problems increased after a May 2001 motor vehicle accident but were still “in large part related to what had already happened to her.” However, he did not address the relevant issue of whether appellant remained disabled after June 22, 1997 causally related to her accepted employment injury and thus his report is of little probative value. Further, Dr. Wachs provided no rationale for his opinion. Medical evidence must be in the form of a reasoned opinion by a qualified physician based upon a complete and accurate factual and medical history.¹⁰ A physician’s opinion on causal relationship between a claimant’s disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.¹¹ Appellant, consequently, has not submitted rationalized medical evidence sufficient to support a determination that she had any further employment-related disability on or after June 22, 1997.¹²

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Federal Employees’ Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation.¹³ To required the Office to reopen a case for merit review under section 8128(a) of the Act, the Office’s regulations at section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.¹⁴ Section 10.608 provides that, when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.¹⁵

⁹ *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹⁰ *Kathleen M. Fava (John F. Malley)*, 49 ECAB 519 (1998).

¹¹ *Jean Culliton*, 47 ECAB 728 (1996).

¹² The medical evidence submitted by appellant is insufficient to constitute the weight of the medical evidence or create a conflict with the second opinion physician, Dr. DeBonis, whose report continues to constitute the weight of the medical evidence and establishes that appellant has no employment-related disability on or after June 22, 1987.

¹³ 5 U.S.C. § 8128(a).

¹⁴ 20 C.F.R. § 10.606(b)(2).

¹⁵ 20 C.F.R. § 10.608(b).

ANALYSIS -- ISSUE 2

In support of her request for reconsideration, appellant submitted a report dated August 22, 2003 from Dr. Wachs, who indicated that he had reviewed the opinion of Dr. DeBonis, the Office referral physician. He stated that he had “said pretty much all that I can say regarding this situation.” Dr. Wachs related that many things caused appellant’s back condition. He stated, “I think the bursitis certainly can aggravate the underlying disc problem, but I do not know what else I can do to clarify this.” Dr. Wachs’ August 22, 2003 report is substantially similar to his earlier reports already contained in the case record and previously considered by the Office.¹⁶ Further, Dr. Wachs’ report fails to address the relevant issue of whether appellant continues to suffer disability causally related to her accepted employment injury.¹⁷ Therefore, his report is not sufficient to require the Office to reopen appellant’s case for review of the merits of her claim.

CONCLUSION

The Board finds that appellant has not established that she is entitled to compensation benefits beginning June 22, 1997 causally related to her January 19, 1994 employment injury. The Board further finds that the Office properly denied merit review under section 8128.

¹⁶ Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case. *James A. England*, 47 ECAB 115 (1995).

¹⁷ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case. *Barbara A. Weber*, 47 ECAB 163 (1995).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 16 and June 5, 2003 are affirmed.

Issued: July 21, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member