

employment injuries after that date.¹ The Board found that the weight of the evidence rested with Dr. Jack L. Vandernoot, a Board-certified orthopedic surgeon and impartial medical examiner, who advised that appellant had no further residuals or disability causally related to her accepted employment injury. The Board considered her arguments that Dr. Vandernoot's opinions and conclusions were erroneous and that her claim should be expanded to include the conditions of lumbar and cervical protrusions with radiculopathy and approve the April 27, 1998 surgery as causally related to the employment injury. The Board found that Dr. Vandernoot was properly selected to act as an impartial medical specialist in this case and that his medical report was based on a proper factual background and based on objective physical findings in support of his conclusion that appellant was no longer disabled and had no residuals of her accepted employment injury. The Board noted that additional medical reports submitted thereafter were insufficient to overcome the special weight accorded to Dr. Vandernoot's medical opinion as an impartial medical specialist. The Board found that appellant had not submitted additional probative medical opinion evidence sufficient to establish that she had continuing disability causally related to her accepted employment injuries after March 10, 1998. The law and the facts of this case as set forth in the Board's April 24, 2002 decision are herein incorporated by reference.²

By letter dated November 5, 2002, appellant's counsel requested reconsideration before the Office and submitted arguments she believed warranted further consideration. Counsel contended that appellant was denied due process as the Office failed to notify her it was proposing to deny authorization for surgery and to terminate benefits on the grounds that there were no residuals due to the accepted employment injury. She also contended that the statement of accepted facts presented to Dr. Jeffrey A. Berman and Dr. Vandernoot was inadequate, the questions presented to Dr. Berman did not address the purpose of the examination, the questions posed to Dr. Vandernoot were improper, the statement regarding the conflict was misleading and biased and Dr. Berman's opinion was unrationalized. Thirdly, counsel contended that the Office erred in failing to expand the claim to include the conditions of aggravation of cervical spondylosis and aggravation of spondylolisthesis at L5-S1.

In the statement of accepted facts given to Dr. Vandernoot, the Office noted that appellant filed a claim for a traumatic injury when she slipped and fell at work on June 4, 1995. The Office noted that the claim had been initially accepted for cervical strain and contusion and was subsequently expanded to include lumbar/cervical strain and resolved left wall chest contusion. The current treating physicians were identified as Dr. Homer L. Williams and Dr. Mehdi Habibi. Lastly, the Office noted it was currently unknown the amount of lost work time appellant had due to this injury. With regards to the questions posed, the Office requested the impartial medical examiner to determine whether she had continued to have any residuals due to the June 4, 1995 employment and to provide supporting medical documentation. The Office also requested the physician to provide all diagnoses due to the injury, whether appellant

¹ On June 7, 1995 appellant, then a 47-year-old nursing assistant, filed a traumatic injury claim alleging that on June 4, 1995 she injured her back when she slipped and fell. She stopped work on June 7, 1995 and returned to a limited-duty job on April 27, 1996. The Office accepted the claim for cervical and lumbar strains and left chest wall contusion.

² Docket No. 00-2466 (issued November 5, 2001).

was capable of performing her date-of-injury job or was capable of gainful employment. With regards to the conflict, the Office noted a conflict in the medical opinion evidence existed between appellant's treating physicians, Dr. Habibi and Williams and the Office referral physician, Dr. Berman, regarding whether she was capable of working and whether her diagnosis should be expanded to include degenerative disc disease and cervical disc bulge as due to the accepted employment injury.

By merit decision dated February 4, 2003, the Office denied appellant's request for modification. The Office found her arguments regarding the failure of the Office to notify her were unfounded and insufficient to warrant modification. With regards to her arguments regarding the statement of accepted facts and questions posed, the Office found the arguments "insignificant and insufficient to alter the weight of the medical opinion evidence." Lastly, the Office rejected appellant's arguments that her claim should be expanded to include the diagnoses of aggravation of cervical spondylosis and aggravation of spondylolisthesis at L5-S1 on the grounds that Dr. Vandernoot stated surgery was unnecessary and appellant required no further medical treatment for her accepted employment injuries.

LEGAL PRECEDENT

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that she had continuing disability due to her accepted employment injury.³ 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.⁴ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁵ Rationalized medical opinion evidence is medical evidence, which includes a physician's 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.⁶ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the

³ *Gayle Harris*, 52 ECAB 319 (2001); *Manuel Gill*, 52 ECAB 282 (2001); *Lawrence D. Price* 47 ECAB 120 (1995).

⁴ *See John D. Jackson*, 55 ECAB ____ (Docket No. 03-2281, issued April 8, 2004); *Manuel Gill*, 52 ECAB 282 (2001).

⁵ *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); *Elizabeth Stanislav*, 49 ECAB 540 (1998).

⁶ *Steven S. Saleh*, 55 ECAB ____ (Docket No. 03-2232, issued December 12, 2003); *Claudio Vazquez*, 52 ECAB 496 (2001); *Gloria J. McPherson*, 51 ECAB 441 (2000).

care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS

Subsequent to the Board's decision, appellant's counsel requested reconsideration with the Office and presented legal argument in support of the request. The Office considered her contentions regarding the evidence, including whether she had established continuing disability after March 10, 1998 due to her accepted employment injury. The Board finds appellant's contentions without merit and insufficient to establish that the termination was improper or that she has any continuing disability due to her accepted employment injury.

Appellant's counsel contended that the Office improperly terminated appellant's compensation for the following reasons: (1) the Office denied appellant due process when it failed to notify her that it was proposing to terminate her compensation benefits and deny her request for surgical intervention; (2) the Office provided an inadequate statement of accepted facts to the second opinion physician and the impartial medical examiner; (3) the Office posed improper questions to the second opinion physician who did not adequately respond to the questions and made no reference to the statement of accepted facts; (4) the report of the second opinion physician did not create a conflict; (5) the conflict statement is misleading and objectionable; and (6) the Office erred by failing to expand appellant's accepted conditions to include aggravation of cervical spondylosis and aggravation of spondylolisthesis at L5 and S1 that the impartial medical examiner did not find these conditions had ceased and that the Office improperly denied surgery.

With respect to appellant's contention that she was denied due process because the Office failed to notify her regarding the proposal to deny her compensation benefits and deny her request for surgery, the Board finds this argument to be without merit. In keeping with its regulation,⁸ the Office issued a notice of proposed termination of compensation benefits on February 5, 1998 on the ground that she no longer suffered from residuals due to her accepted June 4, 1995 employment injuries. The Office also denied appellant's request for authorization of lumbar surgery on the grounds that it was not related to her employment injury. Thus, contrary to her contentions she was not denied due process or not given notification. The evidence of record clearly establishes that appellant was provided notice of the proposal to terminate her compensation benefits and deny her request for authorization of surgery in the Office's February 5, 1998 notice proposing to terminate her compensation benefits.

Next, appellant contends that the Office provided an inadequate statement of accepted facts to the second opinion physician and the impartial medical examiner. Contrary to her contention, the Board finds that the statement of accepted facts contained the information required by the procedure manual including appellant's name and age; her employer and the job held at the time of injury; the mechanism of the injury; the accepted condition; her work history

⁷ *Duane B. Harris*, 49 ECAB 170 (1997).

⁸ 20 C.F.R. § 10.540(a).

since the injury; and a description of medical treatment since the injury, including the names of the physicians.⁹

Appellant contends that the Office posed improper questions or leading questions to the second opinion physician, Dr. Berman, whom she contends did not adequately respond to the questions and made no reference to the statement of accepted facts. The Board has reviewed the questions posed by the Office for Dr. Berman and note that they do not show that the Office attempted to lead Dr. Berman towards a particular outcome. The questions posed requested him to provide his opinion on appellant's current condition, disability and whether she was capable of performing her date-of-injury position or other employment. The Board finds that these questions were not leading. Moreover, the Board finds that Dr. Berman adequately responded to the questions posed and referenced the statement of accepted facts. He concluded that appellant was not totally disabled and capable of working with restrictions.

Appellant also contends that the Office posed improper questions or leading questions to the impartial medical examiner, Dr. Vandernoot, whom she contends did not adequately respond to the questions and made no reference to the statement of accepted facts. The Board has reviewed the questions posed by the Office for Dr. Vandernoot and note that they do not show that the Office attempted to lead him towards a particular outcome. The questions posed requested him to provide his opinion on appellant's current condition, disability and whether she was capable of performing her date-of-injury position or other employment. The Board finds that these questions were not leading as they were not aimed at eliciting a particular response. Moreover, the Board finds that Dr. Vandernoot adequately responded to the questions posed and referenced the statement of accepted facts. He concluded that appellant was not totally disabled and capable of working with restrictions.

Next, appellant contends that Dr. Berman's report did not create a conflict in the medical opinion evidence. Her attending physicians Dr. Habibi and Dr. Williams both concluded that appellant was totally disabled while Dr. Berman concluded that she was capable of working and that her injury should not have last more than five and half months. He also diagnosed a soft tissue injury while Dr. Williams diagnosed a disc bulge of the lumbar and cervical spine and spondylolisthesis and Dr. Habidi diagnosed cervical discogenic disease. Thus, the Board finds that the Office properly found a conflict in the medical opinion evidence and referred appellant to Dr. Vandernoot for resolution of the conflict.

Lastly, appellant contends that the Office erred by failing to expand her accepted conditions to include aggravation of cervical spondylosis and aggravation of spondylolisthesis at L5 and S1, that the impartial medical examiner did not find these conditions had ceased and that the Office improperly denied authorization for surgery. The Board finds that Dr. Vandernoot in his report, opined that her employment injury caused an aggravation of cervical spondylosis and aggravation of spondylolisthesis at L5 and S1. The Board, however, finds appellant's remaining contentions without merit. Dr. Vandernoot opined that she did not require any continuing medical treatment, she had no restrictions due to her employment injury and that she was capable of performing her date-of-injury position. He also concluded that surgery was not warranted.

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600(3) (October 1990).

Thus, the Office properly terminated appellant's compensation benefits as there was no continuing employment-related disability and denied her request for authorization for surgery.

CONCLUSION

The Board finds the evidence sufficient to expand the accepted conditions to include an aggravation of cervical spondylosis and aggravation of spondylolisthesis at L5 and S1 based upon the opinion of the impartial medical examiner Dr. Vandernoot. The Board also finds that appellant has not met her burden of proof to establish that she had disability causally related to her accepted employment injuries after March 10, 1998.

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2003 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: January 5, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member