

the Board reversed the Office's June 28, 2001 decision terminating appellant's compensation on the basis that she had no continuing disability due to her December 1, 1999 employment injury and the Office hearing representative's April 10, 2002 decision denying modification of the June 28, 2001 decision. The Board found a conflict in the medical opinion evidence between Dr. Mordechai Kamel, an Office referral physician, and Dr. Joel A. Saperstein, appellant's treating physician, as to whether appellant had any continuing residuals or disability causally related to the accepted employment injury. The facts of the case are set forth in this decision.¹ By order dated February 12, 2003, the Board granted the Director's petition for reconsideration and affirmed the Office's June 28, 2001 and April 10, 2002 decisions in part as it found that the Office properly terminated appellant's compensation effective June 28, 2001. The Board, however, set aside the Office's April 10, 2002 decision and remanded the case to the Office for resolution of the conflict in the medical opinion evidence between Dr. Saperstein and Dr. Kamel, which arose after the Office's termination of appellant's compensation, to be followed by an appropriate decision.²

On remand, the Office issued a decision dated July 23, 2003, finding that appellant was not entitled to continuing compensation benefits based on the June 3, 2003 medical report of Dr. William C. Walsh, a Board-certified orthopedic surgeon and impartial medical examiner, who opined that appellant did not have any residuals or disability causally related to the December 1, 1999 employment injury.

Appellant appealed the Office's July 23, 2003 decision to the Board. In an April 29, 2004 decision, the Board found that Dr. Walsh's medical opinion was not sufficient to resolve the conflict in the medical opinion evidence as he did not specifically address the issue of whether appellant had any residuals or disability due to her employment injury subsequent to June 28, 2001, the date the Office terminated her compensation. Further, he did not indicate whether he agreed with Dr. Saperstein's opinion that appellant had an employment-related back condition that rendered her partially disabled. Moreover, the Office did not request that Dr. Walsh specifically address whether appellant had any employment-related residuals or disability subsequent to June 28, 2001. Consequently, the Board set aside the Office's decision and remanded the case to the Office for clarification.³

On remand, the Office requested, in a letter dated May 25, 2004, that Dr. Walsh provide a supplemental medical report which addressed whether appellant had any continuing residuals or disability due to the December 1, 1999 employment injury after June 28, 2001 and, if so, to provide medical rationale explaining when such residuals ceased to exist. Dr. Walsh submitted a report dated June 22, 2004 in which he stated that he reviewed appellant's case record again. Based on this review, Dr. Walsh opined that as of June 28, 2001 appellant had no continuing residuals or disability due to the December 1, 1999 employment injury. He stated that there was no compelling evidence of objective findings in Dr. Saperstein's notes to support disability on or about the date in question. Dr. Walsh further stated that he had no reason to doubt Dr. Kamel's

¹ Docket No. 02-1747 (issued November 15, 2002).

² *Order Granting Petition for Recon.*, Docket No. 02-1747 (issued February 12, 2003).

³ Docket No. 03-2028 (issued April 29, 2004).

findings. He noted the April 13, 2001 findings of Dr. Julien Vaisman, a Board-certified anesthesiologist and internist, which included a diagnosis of resolved facet joint arthropathy and osteoarthritic pain and no evidence of clear neuropathic pain. Dr. Walsh stated that Dr. Vaisman's findings on physical examination were benign without objective evidence of continuing disability and the history portion of his report indicated that appellant was doing well following the facet joint with almost complete resolution of her symptoms. Dr. Walsh noted Dr. Vaisman's finding that appellant continued to experience right leg pain just below the knee which may have been independent of her original condition.

By decision dated July 9, 2004, the Office found that appellant no longer had any residuals or disability causally related to the December 1, 1999 employment injury. The Office accorded special weight to Dr. Walsh's June 22, 2004 report.

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 has a disability causally related to her accepted employment injury.⁴ To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such causal relationship.⁵ Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized 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

In situations where there exist opposing medical reports of virtually equal weight and rationale and 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 upon a proper factual background, must be given special weight.⁷

ANALYSIS

Dr. Walsh submitted a supplemental report dated June 22, 2004 in which he opined that as of June 28, 2001 appellant had no continuing residuals or disability due to the December 1, 1999 employment injury. He reviewed appellant's case record and specifically stated that there

⁴ *George Servetas*, 43 ECAB 424, 430 (1992).

⁵ *Donald Leroy Ballard*, 43 ECAB 876, 882 (1992).

⁶ *See Carolyn F. Allen*, 47 ECAB 240, 245 (1995); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁷ *See Willie M. Miller*, 53 ECAB 697 (2002); *James M. Frasher*, 53 ECAB 794 (2002).

were no compelling objective findings in Dr. Saperstein's notes to support disability on or about the date in question and that he had no reason to doubt Dr. Kamel's findings. Dr. Walsh also noted Dr. Vaisman's April 13, 2001 findings which revealed resolved facet joint arthropathy, osteoarthritic pain and no evidence of clear neuropathic pain. Dr. Walsh stated that Dr. Vaisman's physical examination was benign because he did not report any objective findings of continuing disability and indicated that appellant was doing well following the facet joint arthropathy with almost complete resolution of her symptoms.

The Board finds that Dr. Walsh's June 22, 2004 opinion is entitled to special weight as the impartial medical specialist for determining that appellant is not entitled to compensation benefits on the grounds that she no longer has any residuals or disability causally related to her December 1, 1999 employment-related aggravation of lumbar strain. Dr. Walsh's report is sufficiently well rationalized and based upon a proper factual background.

CONCLUSION

The Board finds that the Office properly determined that appellant no longer had any continuing residuals or disability causally related to her December 1, 1999 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 6, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member