

FACTUAL HISTORY

On March 30, 1982 appellant, then a 34-year-old clerk, filed a traumatic injury claim alleging that he slipped on a waxed floor and injured his right ankle.¹ The Office accepted the claim for right ankle sprain, lumbosacral sprain and herniated nucleus pulposus at L5-S1 with lumbosacral radiculitis. Appellant worked intermittently thereafter until he stopped work on January 24, 1989.

Appellant came under the care of Dr. Frank S. Folk, a Board-certified orthopedic surgeon, who treated appellant from April 1982 until August 1989. He diagnosed pain of the lower back with derangement of the disc space at L3-4 with radiculopathy and advised that appellant was totally disabled from work. He continued to treat appellant for low back pain and exacerbation through 1989.² A magnetic resonance imaging (MRI) scan dated January 4, 1989 revealed a posterior midline herniation at L5-S1. An MRI scan dated July 16, 1993 revealed no evidence of posterior disc herniation; however, it noted the presence of significant anterior osteophytes. Appellant was also seen in consultation with Dr. Kenneth Schwartz, a Board-certified psychiatrist, on July 20, 1993. He diagnosed post-traumatic stress disorder with depression, post-traumatic derangement of the neck, back and knees and postconcussion syndrome. He opined that appellant developed a psychiatric problem because of the stress of the work accident.

Appellant continued to submit reports from Dr. Folk dated January 28 to April 9, 2003. He diagnosed cervical and lumbar radiculopathy and internal injury of the left knee, due to the work-related injury of March 30, 1982 and opined that appellant was permanently disabled.

On March 18, 2003 the Office referred appellant to Dr. Kenneth Falvo, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated April 7, 2003, Dr. Falvo indicated that he reviewed the records provided to him and performed a physical examination of appellant. He diagnosed cervical sprain resolved, low back sprain resolved and right ankle sprain. Dr. Falvo opined that appellant did not have residuals of his accepted work-related conditions and advised that appellant could return to work in his usual occupation in a full-time capacity without restrictions.

The Office found a conflict of medical opinion between Dr. Folk, a treating physician, who indicated that appellant sustained residuals of his work-related injuries of cervical and lumbar radiculopathy and internal injury of the left knee and was totally disabled from work and Dr. Falvo, an Office referral physician, who determined that appellant did not suffer residuals of his accepted work-related injuries and opined that appellant could return to his regular position without restrictions.

¹ Appellant filed a separate traumatic injury claim for an injury to his head and back, which occurred on November 30, 1982 and was accepted by the Office in claim number 02-0505902. Appellant filed a claim for an injury which occurred on September 17, 1986, which was accepted for an aggravating trauma to the back, leg and ankle, in claim number 02-0563215. The Office consolidated these claims with the current claim before the Board.

² The Office referred appellant to a second opinion physician on January 18, 1990, Dr. Salvatore R. Lenzo, a Board-certified orthopedist, who noted in a report dated February 6, 1990 that appellant continued to have residuals of his work-related injury.

To resolve the conflict the Office referred appellant to Dr. Frank P. Vaccarino, a Board-certified orthopedic surgeon, selected as the impartial medical specialist. In a report dated June 4, 2003, he reviewed the records and listed results of a physical examination of appellant. Dr. Vaccarino noted a history of appellant's work-related injury. He noted findings upon physical examination of normal cervical lordosis, no evidence of guarding of the trunk area, range of motion revealed resistance beyond 60 degrees, the ankles revealed no evidence of reactive synovitis of the ankle joints and dorsiflexion of the ankles was unrestricted to 30 degrees. Dr. Vaccarino diagnosed cervical and lumbosacral sprains resolved, sprain of the right ankle resolved and sprain of the left ankle resolved. He advised that based on the objective findings the accepted conditions have resolved and appellant has not sustained any additional injuries superimposed on the original injury of March 30, 1982. He opined that based on the review of the medical records and his examination of appellant, appellant has reached maximum medical improvement and would be able to return to his regular occupation in a full-time capacity without restrictions. Dr. Vaccarino advised that appellant did not need any further treatment.

On January 22, 2004 the Office issued a notice of proposed termination of compensation benefits on the grounds that Dr. Vaccarino's report dated June 4, 2003 established no residuals of the work-related employment injury.

By decision dated February 27, 2004, the Office terminated appellant's compensation benefits effective that day on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from his accepted employment injury.

On January 17, 2005 appellant requested reconsideration. Appellant noted that he continued to experience residuals of his accepted conditions and submitted additional medical evidence. In a report dated March 7, 2004, Dr. Robert L. Hamlin, a Board-certified neurologist, reviewed a history of injury and diagnosed cervical myelopathy, low back syndrome, lumbar radiculopathy at L4, L5, A1, contusion of the right hip and sprained right knee and shoulder. He recommended an MRI scan of the cervical spine. Appellant was also seen in consultation with Dr. Louis C. Rose, a Board-certified orthopedist, who noted in a report dated March 17, 2004, that appellant fell at work on March 10, 1998 and injured his cervical spine, right shoulder, knee and right ankle. He diagnosed cervical spine sprain with possible radiculopathy, thoracic spine sprain, lumbosacral spine sprain, right shoulder traumatic impingement, contusion to the right hip, internal derangement of the right knee and lateral ligament complex injury to the right ankle. Also submitted were reports dated March 19 and May 25, 2004, from Dr. Folk who noted treating appellant for exacerbation of back pain, painful right knee and noted positive physical findings of tenderness of the back and numbness and weakness of the right leg. He diagnosed lumbar radiculopathy, internal injury of the right knee, discogenic disease of the lower back and internal injury of the left knee and opined that appellant was totally disabled and required additional treatment. In a report dated August 2, 2004, Dr. Folk diagnosed cervical radiculopathy, contusion of the right shoulder, lumbar radiculopathy, sprained right knee and sympathetic left knee and opined that appellant's injuries were directly related to the work-related accident. Dr. Folk's report's of November 18 and December 14, 2004 advised that appellant was treated for further injuries of the right knee and lower back sustained in recent spontaneous falls. He noted appellant's continued complaints of pain in the neck, right shoulder, elbow, right wrist, low back and right leg, which he opined was directly related to the fall in

August 2004. Dr. Folk diagnosed cervical radiculopathy, sprained right shoulder, contusion of the right elbow, sprained right wrist, lumbar discogenic disease, internal injury of the right knee and sprained right ankle and advised that appellant was totally disabled.

In an April 8, 2005 decision, the Office denied modification of the February 27, 2004 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.⁵

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for right ankle sprain, lumbosacral sprain and herniated nucleus pulposus at L5-S1 with lumbosacral radiculitis. A conflict in medical opinion was found between appellant's attending physician, Dr. Folk who opined that appellant still had residuals of his accepted conditions and opined that these conditions were causally related to the accepted work-related injury and Dr. Falvo, an Office referral physician, who opined that appellant's right ankle sprain, lumbosacral sprain, herniated pulposis at L5-S1 and lumbosacral radiculitis were resolved and appellant could return to full-time duty without restrictions. Consequently, the Office referred appellant to Dr. Vaccarino to resolve the conflict.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁶

In a June 4, 2003 report, Dr. Vaccarino reviewed the case record and statement of accepted facts. He examined appellant thoroughly and related his clinical findings. He noted findings upon physical examination of normal cervical lordosis, no evidence of guarding of the trunk area, range of motion revealed resistance beyond 60 degrees, the ankles revealed no evidence of reactive synovitis of the ankle joints and dorsiflexion of the ankles was unrestricted to 30 degrees. He diagnosed cervical and lumbosacral sprains resolved, sprain of the right ankle resolved and sprain of the left ankle resolved. Dr. Vaccarino advised that based on the objective

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁴ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁵ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

findings the accepted conditions have resolved and appellant has not suffered any additional injuries superimposed on the original injury of March 30, 1982. He opined that based on the review of the medical records and his examination of appellant, appellant has reached maximum medical improvement and would be able to return to his regular occupation in a full-time capacity without restriction. He advised that appellant did not need any further treatment.

The Board finds that the opinion of Dr. Vaccarino is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight. The report of the impartial medical specialist establishes that appellant's work-related conditions ceased without residual disability. He reviewed the case record and statement of accepted facts and examined appellant. Dr. Vaccarino opined that appellant had no residuals or disability attributable to his accepted conditions. The Board finds that Dr. Vaccarino's opinion represents the weight of the medical evidence and is sufficient to support the Office's termination of benefits.⁷

LEGAL PRECEDENT -- ISSUE 2

Where the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that he had continuing disability causally related to his accepted employment injury.⁸ 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 a causal relationship. 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that he has any continuing residuals of his right ankle sprain, lumbosacral sprain and herniated nucleus pulposus at L5-S1 with lumbosacral radiculitis causally related to his accepted employment injuries on or after February 27, 2004.

⁷ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

⁸ *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

⁹ See *Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

Appellant submitted reports from Dr. Folk dated March 19 and May 25, 2004, who noted treating appellant for exacerbation of back pain and a painful right knee and diagnosed lumbar radiculopathy, internal injury of the right knee and discogenic disease of the lower back. He stated that appellant continued to have significant limitation in the use of the left knee and lower back and opined that appellant was totally disabled and required additional treatment. Other reports from Dr. Folk dated August 2, 2004, noted that appellant's continued to experience residuals of his injuries that was directly related to the work-related accident. He diagnosed cervical radiculopathy, contusion of the right shoulder, lumbar radiculopathy, sprained right knee and sympathetic left knee and opined that appellant required further treatment. However, Dr. Folk did not specifically address how any continuing condition or medical restrictions were causally related to the accepted March 30, 1982 employment injury. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹⁰ The Office never accepted that appellant sustained an internal injury of the right knee, cervical radiculopathy, contusion of the right shoulder, sprained right knee or a sympathetic left knee as a result of the March 30, 1982 work injury and there is no medical rationalized evidence to support such a conclusion.¹¹ Therefore, these documents are insufficient to meet appellant's burden of proof.

Dr. Folk's reports of November 18 and December 14, 2004 noted appellant's continued complaints of pain in the neck, right shoulder, elbow, right wrist, low back and right leg and advised that appellant was totally disabled. However, he attributed appellant's condition to several spontaneous falls he experienced and not to the accepted work-related injury of March 30, 1982. Moreover, his report did not include a rationalized opinion regarding the causal relationship between appellant's current condition and his accepted work-related injury of March 30, 1982.¹² Dr. Folk's reports are similar to his prior reports and, as he was on one side of the conflict that Dr. Vaccarino resolved, his reports are insufficient to overcome that of Dr. Vaccarino or to create a new medical conflict.¹³

Appellant submitted a report from Dr. Hamlin dated March 7, 2004, who diagnosed cervical myelopathy, low back syndrome, lumbar radiculopathy at L4, L5, A1, contusion of the right hip, sprained right knee and shoulder. However, Dr. Hamlin did not provide a rationalized opinion specifically addressing how any continuing condition was causally related to the accepted March 30, 1982 employment incident. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹⁴ Additionally, the Office never accepted that appellant sustained cervical myelopathy, low back

¹⁰ *Id.*

¹¹ See *Alice J. Tysinger*, *supra* note 3.

¹² See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹³ See *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Folk's report does not contain new findings or rationale upon which a new conflict might be based.

¹⁴ See *Jimmie H. Duckett*, *supra* note 12.

syndrome, contusion of the right hip, sprained right knee and shoulder as a result of his March 30, 1982 work injury and there is no medical rationalized evidence to support such a conclusion.¹⁵ Likewise, Dr. Rose's report dated March 17, 2004, noted that appellant fell at work on March 10, 1998 and sustained various injuries. However, Dr. Rose did not provide an accurate history of injury as the physician indicated that the injury occurred on March 10, 1998, which is different than the history provided by appellant which indicated that he injured his back on March 30, 1982.¹⁶

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between his current condition and his accepted work-related injury of March 30, 1982.¹⁷ The Board has found that vague and unrationalized medical opinion on causal relationship have little probative value. Therefore, the Board finds that the reports from Drs. Folk, Hamlin and Rose are insufficient to overcome that of Dr. Vaccarino or to create a new medical conflict.¹⁸

CONCLUSION

The Board finds that the Office has met its burden of proof to terminate benefits effective February 27, 2004. The Board further finds that appellant failed to establish that he had any continuing disability after February 27, 2004.¹⁹

¹⁵ See *Alice J. Tysinger*, *supra* note 3.

¹⁶ See *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

¹⁷ *Id.*

¹⁸ *Howard Y. Miyashiro*, *supra* note 13. The Board notes that the reports of Drs. Folk, Hamlin and Rose do not contain new findings or rationale upon which a new conflict might be based.

¹⁹ With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Worker's Compensation Programs dated April 8, 2005 is affirmed.

Issued: November 4, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board