

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**ANNIE M. WEBSTER, Appellant**

**and**

**DEPARTMENT OF HOUSING & URBAN  
DEVELOPMENT, Columbus, OH, Employer**

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**Docket No. 05-1549  
Issued: July 3, 2006**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 21, 2005 appellant, through her attorney, filed a timely appeal of a June 20, 2005 decision of an Office of Workers' Compensation Programs' hearing representative, who affirmed the termination of her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether the Office properly terminated appellant's compensation effective August 7, 2004 on the grounds that she no longer had any residuals or disability causally related to her July 30, 1986 and June 7, 1988 employment injuries; (2) whether appellant established that she had any continuing employment-related residuals or disability after August 7, 2004; and (3) whether appellant has established that she sustained a consequential emotional condition injury due to her accepted July 30, 1986 and June 7, 1988 employment injuries.

## **FACTUAL HISTORY**

On July 30, 1986 appellant, then a 56-year-old receiving and record clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she hurt her lower back when she slipped and fell onto a wet floor in the employing establishment cafeteria. The Office accepted her claim for multiple contusions of the left arm and left leg, left shoulder strain and muscle spasms of the neck, thoracic and lumbar spines. The Office paid appellant appropriate compensation.

On June 16, 1988 appellant filed a Form CA-1 alleging that on June 7, 1988 she hurt her back when she tripped over a computer terminal cord at work. She stopped work on October 25, 1988 and did not return. The Office accepted her claim for contusion of the pelvis and pelvic and lumbosacral strains. Appellant received appropriate compensation for total disability.

In a March 21, 2001 medical report, Dr. William W. Nucklos, an attending physiatrist, opined that she had subjective and objective physical findings consistent with a chronic cervical sprain/strain, chronic bilateral groin strain and chronic lumbosacral sprain/strain with resultant chronic pain syndrome due to the June 7, 1988 employment injury.

By letter dated May 9, 2001, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. James H. Rutherford, a Board-certified orthopedic surgeon, for a second opinion medical examination. In a May 29, 2001 report, Dr. Rutherford provided a history of appellant's July 30, 1986 and June 7, 1998 employment injuries and medical treatment. He reported her complaint of constant lower back pain that radiated down into her calves and noted that she took medication for depression. He reported essentially normal findings on physical examination and stated that appellant had residuals of a cervical strain, some left and right trapezius tenderness and lumbosacral strain with evidence of radiculopathy in the right lower extremity. Appellant had decreased sensation over the lateral aspect of each leg and no impairment related to her pelvic conditions or left arm, although she only had 90 degrees of active flexion and 90 degrees of abduction of the left shoulder. Dr. Rutherford diagnosed a rotator cuff tear of the left shoulder based on a 1993 arthrogram and found Category II and Category III impairments of the cervical and lumbosacral spines, respectively. He opined that appellant could not return to her date-of-injury job and could not lift, push or pull more than five pounds, lift overhead using the left upper extremity and stoop or bend. She was restricted to occasional walking and standing but she could only walk 10 minutes at a time with a cane, sitting for 4 hours a day and driving only 20 minutes. Dr. Rutherford stated that the restrictions regarding stooping and walking were primarily due to degenerative arthritis of the right knee, which was unrelated to the accepted employment injuries. In a May 29, 2001 work capacity evaluation, he listed appellant's physical limitations and stated that she was totally disabled.

By letter dated July 17, 2001, the Office requested that Dr. Rutherford clarify his opinion regarding appellant's physical limitations and her inability to work. The Office further requested that he address the specific medical conditions which prevented her from working.

In a July 25, 2001 addendum report, Dr. Rutherford stated that appellant could not perform her date-of-injury job and listed her physical limitations. He opined that she was totally

disabled at that time due to active residuals of her work-related medical conditions. Dr. Rutherford stated that appellant did not meet the criteria for sedentary work as defined by the Department of Labor and, thus, was not capable of performing sustained remunerative work activity at that time.

The Office found a conflict in the medical opinion evidence between Dr. Nucklos and Dr. Rutherford regarding appellant's level of work-related disability. By letter dated February 5, 2002, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Walter H. Hauser, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a March 11, 2002 report, Dr. Hauser provided a history of appellant's injuries including the accepted July 30, 1986 and June 7, 1998 work-related injuries and her medical treatment. He reported findings on physical examination of the cervical and lumbar spine and lower extremities. He reviewed x-ray results of the cervical spine which revealed degenerative changes and performed an x-ray of the right and left knee which demonstrated degenerative arthritis in both knees. Dr. Hauser stated that objective testing revealed degenerative changes in the cervical spine and the middle and lower cervical area. He diagnosed extensive arthrosis of the lumbar spine and degenerative arthritis of both knees. Dr. Hauser opined that appellant's July 30, 1986 and June 7, 1998 employment injuries should have long resolved and that she had reached maximum medical improvement. She no longer had any residuals from her accepted employment-related medical conditions. Dr. Hauser explained that the degenerative changes in the cervical and lumbar spine and degenerative arthritis of both knees were part of the natural aging process were not caused or aggravated by her work-related injuries. He stated that she was medically capable of returning to her date-of-injury job as a receiving records clerk based on the active residuals of the accepted employment injuries, but the degenerative changes in her lower lumbar area would probably preclude her from returning to this position or any type of remunerative employment due to the amount of time she would have to be on her feet, her age and general body habitus and health. He concluded that her inability to return to work was based on the degenerative conditions that were neither caused nor aggravated by her work-related injuries.

The Office referred appellant, together with a statement of accepted facts and the case record to Dr. Alan B. Levy, a Board-certified psychiatrist, for a second opinion medical examination. The Office asked him to determine whether appellant had a chronic pain syndrome and depression as there was evidence in the record, including Dr. Rutherford's May 29, 2001 report, of these conditions. In a June 6, 2002 report, Dr. Levy provided a history of appellant's employment injuries and medical treatment. He noted that her symptoms of depression had been present over the past several years and were related to pain. Dr. Levy found that appellant suffered from depression NOS directly due to pain. He was uncertain as to whether the diagnosed condition was related to her employment injuries, but stated that it was unquestionably related to her pain. Dr. Levy opined that depression did not disable appellant and that she was able to work in any position for which she was physically capable.

In a July 25, 2002 addendum report, Dr. Levy reiterated that appellant's depression was due to pain. He stated that he was unable to evaluate the degree of pain that was due to the work-related injuries. Dr. Levy related that since previous evaluators had determined that

appellant's work-related injuries had completely resolved, he assumed that her current pain was due to nonwork-related injuries and stated that her depression was not due to the work-related injuries. Dr. Levy also stated that if her current pain was due to the accepted employment injuries, then her depression was due to these injuries.

By letter dated July 26, 2002, the Office issued a notice of proposed termination of appellant's compensation based on Dr. Hauser's March 11, 2002 report. The Office provided 30 days in which appellant could respond to this notice.

Appellant submitted Dr. Nucklos' August 12, 2002 office notes. He reviewed Dr. Hauser's report and agreed that there was significant evidence that appellant had degenerative joint disease and osteoporosis. Dr. Nucklos disagreed that her conditions were unaffected by the accepted employment injuries. He opined that appellant's current chronic pain symptoms and associated depression were a direct and proximate result of the accepted work-related injuries.

By decision dated September 11, 2002, the Office terminated appellant's compensation effective that date. It found that her conditions and disability causally related to the July 30, 1986 and June 7, 1988 employment injuries had resolved. The Office accorded special weight to Dr. Hauser's March 11, 2002 medical report as an impartial medical specialist.

In a September 27, 2002 letter, appellant, through her attorney, requested an oral hearing before an Office hearing representative. The Office received Dr. Nucklos' April 22, 2003 clinical note which found that appellant continued to experience residuals related to her accepted employment injuries. These included recurring muscle spasms throughout the cervical paraspinal, trapezius and lumbar paraspinal musculature and sensory deficit involving the right lower extremity below the knee with an L5 distribution. Dr. Nucklos opined that she developed insomnia and increased depression as a result of her work-related pain symptoms.

By decision dated July 14, 2003, a hearing representative set aside the Office's September 11, 2002 decision and remanded the case for further development. He found that no conflict in the medical opinion evidence arose between Dr. Nucklos and Dr. Rutherford as both physicians had agreed that appellant was totally disabled due to her accepted employment injuries. The hearing representative found that Dr. Hauser's report was not entitled to special weight accorded an impartial medical examiner, but would be accorded as a sound opinion. He found a conflict in the medical opinion evidence arising between Dr. Hauser and Dr. Nucklos as to whether appellant had any continuing residuals or disability causally related to her July 30, 1986 and June 7, 1988 employment injuries. The hearing representative instructed the Office to refer appellant, together with a statement of accepted facts and the case record, to an appropriate impartial medical specialist to resolve the conflict.

By letter dated December 1, 2003, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Alan L. Longert, a Board-certified orthopedic surgeon, for an impartial medical examination. In a December 31, 2003 medical report, Dr. Longert reviewed the history of appellant's July 30, 1986 and June 7, 1988 employment injuries and medical treatment. He noted her complaints of constant neck pain, with intermittent sharp pain radiating down the back to both hips, left shoulder pain with

intermittent numbness into both hands and low back pain with intermittent numbness down the back of both legs. Dr. Longert reported essentially normal findings on physical examination. On x-ray examination of the cervical spine, he noted degenerative disc disease at C5 and C6, anterior osteophytes at C3-6 and osteoporosis. An x-ray of the left shoulder demonstrated degenerative arthritis of the acromial clavicular joint, anterior inferior acromial spur, superior displacement of the humeral head and osteoporosis of the humerus. An x-ray of the lumbosacral spine revealed degenerative disc disease at L3-S1, Grade 1 degenerative spondylolisthesis at L3-4 and L4-5, advanced degenerative arthritis of the facets from L3 to S1 and osteoporosis. Based on the medical records and statement of accepted facts, he noted that her symptoms of left shoulder pain included difficulty in reaching and lifting, getting dressed, performing overhead work or sleeping on her left shoulder. He found limited flexion to 80 degrees and abduction to 90 degrees, similar findings by Dr. Rutherford on May 29, 2001, and radiographic evidence consistent with an impingement syndrome and a left rotator cuff tear as demonstrated by a June 16, 1993 arthrogram which was degenerative in origin and resulted in a significant functional impairment that was not related to the July 30, 1986 employment-related injury.

Dr. Longert opined that in the absence of any ongoing symptoms related to the employment-related contusions of the left arm and leg and pelvis and the absence of any thoracic or pelvic pain in the medical records and the history at the time of his examination, the contusions of the left arm and leg and pelvis and thoracic myospasm had resolved without any functional impairment. Dr. Longert stated that appellant was capable of full gainful employment without any physical restrictions related to her accepted work-related injuries. He explained that strains/sprains were self-limiting soft tissue injuries characterized by localized pain without any referred pain, radicular pain or numbness in the upper or lower extremities. Dr. Longert stated that myospasm was not an accepted diagnosis but a symptom associated with acute strains/sprains of the spine and other musculoskeletal conditions. He noted that appellant was only treated for low back and radicular symptoms from 1994 through 2000. Dr. Longert stated that the absence of any treatment of her cervical symptoms for seven years and variable cervical symptoms, ranging from discomfort in her neck noted by various physicians on intermittent dates from 1996 through August 6, 2002 and at the time of his examination, was insufficient to establish that her symptoms were medically related to the July 30, 1986 work-related cervical strain. Dr. Longert indicated that appellant's symptoms of constant neck pain with intermittent sharp pain radiating from the neck down to the low back into both hips was inconsistent with a cervical strain or any other condition involving the cervical spine and was characteristic of symptom magnification and somatization, symptoms characteristically seen in emotional disorders including depression as noted by Dr. Levy on June 6, 2002.

Dr. Longert explained the development of degenerative arthritis of the cervical spine, noting that it involved a process of wear and tear which occurred over a long period of time and with aging. The medical literature specifically found no correlation between a patient's symptoms and findings of degenerative disc disease or arthritis since multiple studies had shown that anywhere from 30 percent to 50 percent of the population demonstrated degenerative changes involving the spine without any symptoms. Dr. Longert stated that the July 31, 1986 cervical spine x-ray findings were normal and the 2002 x-ray findings which revealed degenerative disc disease at C5-6 and facet arthritis indicated that appellant had cervical symptoms prior to the 1986 employment injury. He attributed that the ongoing cervical

symptoms to the degenerative arthritis in her neck which developed later as a result of the normal aging process compatible with her stated age.

Dr. Longert opined that appellant's continuing symptoms of back pain, bilateral radicular pain and intermittent numbness into both legs were not related to the June 7, 1988 employment injury since strains/sprains of the spine caused only localized pain without any radicular pain or numbness in the extremities. Appellant's symptoms could not be medically related to the degenerative spondylolisthesis at L3-4 and L4-5 since these conditions began years after the onset of her symptoms. Dr. Longert indicated that her history of the right leg giving way without any neuromuscular deficit on examination and other actions were not medically related to any condition involving the lumbar spine. Rather, they were characteristic of symptom magnification and somatization. He opined that appellant's low back, bilateral radicular pain and intermittent numbness of both legs were not related to the lumbosacral strain caused by the June 7, 1988 employment injury and that she was capable of full gainful reemployment without any restrictions. Dr. Longert further opined that appellant's osteoporosis was not related to the accepted employment injuries.

Dr. Longert concluded that appellant's ongoing symptoms were not related to the accepted employment injuries. Her chronic pain syndrome, somatization, depression, functional impairment from her symptomatic left impingement syndrome and rotator cuff tear, degenerative arthritis of the lumbar spine and bilateral knee arthritis combined with her age and no gainful employment for 15 years, rendered her incapable of obtaining gainful employment. Dr. Longert recommended that she be considered permanently and totally disabled.

In a January 28, 2004 letter, the Office requested that Dr. Longert clarify whether the accepted employment-related injuries had resolved and whether appellant sustained any work-related residual psychological condition that served as a physical mechanism for feeling pain.

By letter dated February 11, 2004, Dr. Longert responded that appellant's left shoulder strain, myospasm of the neck and lumbar spine and pelvic and lumbosacral strains had resolved. None of her symptoms could be medically related to any of the accepted injuries for the reasons stated in his original report. He opined that her current symptoms were not related to the July 30, 1986 and June 7, 1988 employment injuries. Dr. Longert concluded that appellant had no symptomatic musculoskeletal condition or disease that was work related.

The Office, by letter dated March 11, 2004, referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Richard H. Clary, a Board-certified psychiatrist, for a second opinion medical examination.

In an April 19, 2004 report, Dr. Clary provided a history of appellant's employment injuries and noted essentially normal findings on mental status examination. On Axis I, he found no psychiatric diagnosis as a result of the July 30, 1986 and June 7, 1988 employment injuries. He reported no diagnosis on Axis II. On Axis III, Dr. Clary indicated that appellant's claim had been accepted for multiple contusions to the left arm and left leg, left shoulder strain, muscle spasms of the neck and thoracic and lumbar spines, contusion of the pelvis and pelvic strain and lumbosacral strain. He found that she had hypertension, gastroesophageal reflux disease and hypercholesterol which were unrelated to her claim. Based on a review of the medical record,

appellant used a particular medication for approximately five to six years as a part of a pain management program. The use of this medication did not mean that she was suffering from a depressive disorder. Dr. Clary noted Dr. Longert's opinion that appellant's physical conditions which resulted from the July 30, 1986 and June 7, 1998 employment injuries had resolved. Dr. Clary opined that she could return to work without restrictions and that she did not suffer from any psychiatric or psychological impairment or disability. In an April 19, 2004 work capacity evaluation, he found that appellant could work eight hours a day in her usual job with no restrictions.

In an April 29, 2004 letter, the Office issued a notice of proposed termination of compensation based on the reports of Dr. Longert and Dr. Clary. The Office provided 30 days in which appellant could respond to this notice.

In a May 4, 2004 office note, Dr. Nucklos indicated that appellant complained about severe neck and left shoulder pain and moderately severe low back pain. He reported his findings on physical examination and determined that an MRI scan of the left shoulder was necessary to rule out a rotator cuff tear. Dr. Nucklos also determined that a psychological consult was necessary as he found that appellant was slightly depressed.

By letter dated May 10, 2004, the Office advised Dr. Nucklos that his request for an MRI scan of the left shoulder had been approved. The Office denied his request for a psychological evaluation because it had already developed this aspect of appellant's claim and determined that she did not sustain any work-related emotional condition.

The Office received additional office notes from Dr. Nucklos dated April 6, 2004. On physical examination, he reported, among other things, normal range of motion of the cervical, thoracic and lumbar spines. Dr. Nucklos provided essentially normal findings on neurological examination. He stated that a psychological evaluation revealed that appellant was oriented with an appropriate affect.

In a letter dated May 27, 2004, appellant disagreed with the Office's proposed termination action. She disputed the accuracy of Dr. Clary's report. She continued to experience medical problems associated with her work-related injuries. She submitted Dr. Nucklos' office notes, including a June 1, 2004 review of a May 14, 2004 MRI scan of the left shoulder performed by Dr. Jane M. Burk, a Board-certified radiologist. The MRI scan demonstrated a full thickness supraspinatus tendon tear. Dr. Nucklos opined that given the fact that there had been no intervening injuries, the diagnosed condition was related to appellant's original injury and was in a deteriorating state. Dr. Burk's May 24, 2004 MRI scan also found a full thickness supraspinatus tendon tear in addition to moderate acromioclavicular arthropathy and glenohumeral effusion of the left shoulder.

By letter dated June 28, 2004, the Office advised Dr. Longert that it had received additional medical evidence regarding appellant's left shoulder. The Office requested that he review the evidence and address whether his opinion that her accepted employment injuries had resolved and whether she was able to return to her date-of-injury position. The Office also requested that he provide recommendations for future treatment of any work-related residuals.

In a July 25, 2004 letter, Dr. Longert addressed the June 1, 2004 report of Dr. Nucklos. He stated that traumatic rotator cuff tears occurred as a result of a traction or stretching injury to the shoulder primarily in individuals under the age of 40. The medical literature showed that the majority of rotator cuff tears past the age of 40 were degenerative in nature and not due to a traumatic injury. Dr. Longert found that this explanation did not support Dr. Nucklos' finding that the rotator cuff tear had to be due to appellant's previous injury since there were no intervening injuries since that time. He noted that the findings of a June 16, 1993 arthrogram were consistent with a left rotator cuff tear which resulted in a significant functional impairment. Repair of the rotator cuff tear had not been recommended and there was no evidence of record that appellant received any treatment for this condition. He concluded that the new evidence submitted did not change his original opinion that appellant's left shoulder strain and contusion of the left arm resolved without any functional impairment. Dr. Longert added that no further treatment was needed and that she was capable of full gainful employment without restrictions.

By decision dated August 4, 2004, the Office terminated appellant's compensation effective August 7, 2004. The Office accorded special weight to Dr. Longert's impartial medical opinion in finding that she did not have any continuing orthopedic residuals or total disability causally related to the July 30, 1986 and June 7, 1988 employment injuries. The Office also found that Dr. Clary's April 19, 2004 medical report was sufficient to establish that appellant did not sustain a consequential emotional condition.

In an August 16, 2004 letter, appellant, through her attorney, requested an oral hearing. She submitted the office notes of Dr. Nucklos for intermittent treatment from August 4, 2004 through April 12, 2005 for neck, left shoulder and low back pain.

Following a March 30, 2005 hearing, the Office received a March 25, 2005 letter from Evie L. Bradley, Ph.D., appellant's daughter, regarding the impact of her injuries on the quality of her life. The Office also received Dr. Nucklos' June 14, 2005 office note addressing the treatment of appellant's left shoulder and low back pain.

In a June 20, 2005 decision, an Office hearing representative affirmed the August 4, 2004 decision on the grounds that Dr. Longert's medical opinion was entitled to special weight as an impartial medical specialist. The Office found that appellant no longer had any residuals or disability causally related to her accepted employment injuries.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>1</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>2</sup> Furthermore, in situations where

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<sup>1</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>2</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).



there are 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 on a proper factual background, must be given special weight.<sup>3</sup>

### **ANALYSIS -- ISSUE 1**

A conflict in medical opinion arose between Dr. Nucklos, an attending physician, and Dr. Hauser, an Office referral physician, as to whether appellant had any continuing residuals or disability causally related to the July 30, 1986 and June 7, 1988 employment injuries. The Office had accepted employment-related contusions of the left arm and left leg, left shoulder strain and muscle spasm of the neck, thoracic and lumbar spines and contusion of the pelvis and pelvic and lumbosacral strains. Dr. Nucklos opined that appellant continued to experience residuals and was totally disabled due to the accepted employment injuries. Dr. Hauser opined that her employment-related conditions had resolved and that she had no work-related disability.

The Office referred appellant to Dr. Longert, selected as the impartial medical specialist. Dr. Longert conducted a thorough physical examination which provided normal results on physical examination. On x-ray examination he found degenerative changes, osteoporosis and arthritis in the cervical and lumbar spines and left shoulder. He opined that these conditions were not related to the July 30, 1986 and June 7, 1988 employment injuries which had resolved with no functional impairment. Dr. Longert stated that the degenerative changes in appellant's cervical spine occurred prior to the 1986 employment injury. Although her nonwork-related conditions, including depression, and her age and absence from the workplace for 15 years rendered her totally and permanently disabled, she was physically capable of full gainful employment without any restrictions related to the accepted work-related injuries. He explained the nature of strains/sprains and the development of appellant's degenerative conditions which involved wear and tear that occurred over a long period of time with age. Dr. Longert stated that the absence of any treatment of appellant's condition for seven years and her variable symptoms which included constant neck pain with intermittent sharp pain radiating from the neck down to the low back into both hips were inconsistent with a cervical strain or any other condition involving the cervical spine. Her symptoms of back pain, bilateral radiolar pain and intermittent numbness into both legs were not related to the June 7, 1988 employment injury as strains/sprains of the spine caused only localized pain without any radicular pain or numbness in the extremities. Dr. Longert stated that these symptoms were characteristic of symptom magnification and somatization.

The Board finds that Dr. Longert's opinion is entitled to special weight. He found that appellant no longer had any residuals or disability due to her July 30, 1986 and June 7, 1988 employment injuries. His reports are sufficiently rationalized and based on a proper factual and medical background. Thus, the Office met its burden of proof in terminating compensation benefits.

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<sup>3</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001).

## **LEGAL PRECEDENT -- ISSUE 2**

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to her accepted injuries.<sup>4</sup> 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.<sup>5</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>6</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.<sup>7</sup>

## **ANALYSIS -- ISSUE 2**

The relevant medical evidence regarding continuing employment-related residuals or disability after August 7, 2004 consists primarily of Dr. Nucklos' office notes. He indicated that appellant was treated for neck, left shoulder and low back pain on intermittent dates from August 4, 2004 through June 14, 2005. The Board finds that Dr. Nucklos' office notes are insufficient to establish appellant's claim as they failed to address how her symptoms were causally related to the July 30, 1986 and June 7, 1988 employment injuries. He essentially reiterated his findings and opinion which gave rise to the conflict in medical opinion. Appellant has not submitted rationalized medical evidence establishing that she has any continuing residuals or disability causally related to her accepted employment-related conditions.

The statement provided by appellant's daughter, Dr. Bradley, which discussed the impact of the employment-related injuries on the quality of appellant's life, is not relevant to this claim. It is unclear whether Dr. Bradley is a physician as defined under the Act as her discipline is not readily discernible thereby diminishing any probative value of the submission.<sup>8</sup>

## **LEGAL PRECEDENT -- ISSUE 3**

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that

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<sup>4</sup> See *Manuel Gill*, 52 ECAB 282 (2001).

<sup>5</sup> *Id.*

<sup>6</sup> *Elizabeth Stanislav*, 49 ECAB 540 (1998).

<sup>7</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> See 5 U.S.C. § 8101(2), which states in pertinent part: "‘physician’ includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law...."

flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct.<sup>9</sup> The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.<sup>10</sup> With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.<sup>11</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds the medical evidence of record insufficient to establish a consequential relationship between appellant's emotional condition and the accepted conditions of multiple contusions of the left arm, left leg and pelvis, left shoulder and lumbosacral strains and muscle spasms of the neck, thoracic and lumbar spines that she sustained on July 30, 1986 and June 16, 1988. The evidence relevant to her emotional condition consists of Dr. Clary's April 19, 2004 medical report. He reported essentially normal findings on mental examination. On Axis I Dr. Clary found no emotional condition causally related to the accepted employment injuries. He further found no diagnosis on Axis II. On Axis III he noted appellant's work-related employment injuries and stated that they had resolved based on Dr. Longert's opinion. Dr. Clary diagnosed hypertension, gastroesophageal reflux disease and hypercholesterol unrelated to the accepted employment-related conditions. He concluded that appellant could work eight hours a day in her usual job without restrictions and that she did not suffer from any psychiatric or psychological impairment or disability. The Board finds that Dr. Clary's report is sufficiently rationalized and based on an accurate factual and medical background such that it constitutes the weight of the medical opinion evidence in establishing that appellant did not sustain an emotional condition or any psychological impairment causally related to the July 30, 1986 and June 7, 1988 employment injuries.

Dr. Nucklos' April 6, 2004 office note indicates that appellant was oriented with an appropriate affect based on a psychological evaluation. As Dr. Nucklos did not opine that appellant sustained an emotional condition causally related to her accepted July 30, 1986 and June 16, 1988 employment injuries, his office note is insufficient to establish appellant's claim. The Board, therefore, finds that the evidence of record is insufficient to discharge appellant's burden of establishing that her emotional condition constituted a consequential injury of the accepted employment-related injuries.

### **CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation effective August 7, 2004 on the grounds that she no longer had any residuals or disability causally related to her July 30, 1986 and June 7, 1988 employment injuries. The Board further finds that

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<sup>9</sup> *Albert F. Ranieri*, 55 ECAB \_\_\_\_ (Docket No. 04-22, issued July 6, 2004).

<sup>10</sup> *Id.*; *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

<sup>11</sup> *Kathy A. Kelley*, 55 ECAB \_\_\_\_ (Docket No. 03-1660, issued January 5, 2004).

appellant has failed to establish that she had any continuing employment-related residuals or disability after August 7, 2004. Lastly, the Board finds that appellant has failed to establish that she sustained a consequential emotional condition injury due to her accepted July 30, 1986 and June 7, 1988 employment injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 20, 2005 and August 4, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 3, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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