

work on August 30, 2000 and was released to limited-duty work on September 13, 2000, four hours a day.¹ By letter dated September 22, 2000, the Office accepted his claim for cervical, low back and right shoulder strains. The Office paid appellant appropriate compensation.

To determine whether appellant had any continuing employment-related residuals and disability, the Office, by letter dated April 18, 2003, referred him, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Jerrold M. Sherman, a Board-certified orthopedic surgeon, for a second opinion medical examination.

In an April 30, 2003 medical report, Dr. Sherman noted appellant's complaints of neck, low back and bilateral shoulder pain. He provided a history of appellant's August 29, 2000 employment injury and medical treatment and reviewed his medical records. Dr. Sherman reported findings on physical examination and diagnosed a normal cervical spine and lumbar spine without neurologic deficit and normal shoulders. In response to the Office's questions, he stated that appellant's present medical condition was not related to the accepted employment injuries and there was no aggravation of an underlying condition. Dr. Sherman opined that appellant did not have any employment-related disability. He explained that his subjective complaints were not consistent with the examination findings. Appellant's prognosis was good and he did not need any further medical treatment. Dr. Sherman concluded that he did not have any disability or residuals following the August 29, 2000 employment injury. In an accompanying work capacity evaluation (Form OWCP-5c) dated April 29, 2003, Dr. Sherman stated that appellant could work eight hours a day with no physical limitations.

By letter dated May 6, 2003, the Office requested that Dr. Angela Soohoo, appellant's attending Board-certified physiatrist, review Dr. Sherman's April 30, 2003 report and provide comment.

In a May 1, 2003 report, Dr. Soohoo noted appellant's symptoms of neck and low back pain and his medical treatment for the pain. She reported her findings on physical examination and diagnosed chronic neck pain with underlying degenerative disc disease and spondylosis, chronic low back pain secondary to degenerative disc disease and spondylosis, and a right and left rotator cuff tear with stable tendinitis. Dr. Soohoo recommended, among other things, that appellant receive acupuncture treatments and that he perform modified work with no lifting, pushing or pulling over 10 pounds, reaching above shoulder level, bending, stooping and driving vehicles with jarring motions. She also recommended alternate sitting, standing and walking as needed.

On July 2, 2003 Dr. Soohoo submitted a May 22, 2003 letter stating her disagreement with Dr. Sherman's opinion. Appellant had normal cervical and lumbar spines and shoulders based on the findings of a magnetic resonance imaging (MRI) scan of the right and left shoulders which found degenerative disc disease and spondylosis which could be a source of his pain. She believed that an October 13, 2000 motor vehicle accident did not cause these conditions, but caused appellant's preexisting degenerative disc disease and spondylosis to become symptomatic. Dr. Soohoo opined that his neck, low back and bilateral shoulder pain was precipitated by an October 13, 2000 work-related car accident and was further aggravated with

¹ Appellant subsequently performed limited-duty work six hours a day and then eight hours a day.

work activities such as, heavy lifting, reaching above the shoulder level and sustaining jarring motions while driving vehicles with poor shock absorption.² She further opined that the car accident and appellant's normal work activities aggravated his underlying degenerative disc disease, spondylosis and rotator cuff pathology to become clinically symptomatic. Dr. Soohoo concluded that he required continuing medical treatment and permanent work restrictions.

The Office found a conflict in the medical opinion evidence between Dr. Soohoo and Dr. Sherman regarding the issue of whether appellant had any continuing employment-related residuals or disability. By letter dated July 2, 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. Arthur M. Auerbach, a Board-certified orthopedic surgeon, for an impartial medical examination.

In an August 13, 2003 report, Dr. Auerbach provided a history of appellant's August 29, 2000 employment injuries and medical treatment. He noted that, following these injuries, he initially returned to limited-duty work four hours a day, then six hours a day and that he was currently working eight hours a day. Dr. Auerbach further noted appellant's complaints of neck, bilateral shoulder and low back pain. He reported essentially normal findings on physical and objective examination. Dr. Auerbach diagnosed chronic mild cervical strain with evidence of a small central subligamentous, C2-3 disc herniation and mild narrowing of the left C5-6 neural foramen secondary to a bulging disc and uncovertebral joint spondylosis without present evidence of active or chronic nerve root irritation from the neck into either upper extremity or cervical myelopathy. He diagnosed chronic right shoulder impingement syndrome with evidence of two small partial tears within the supraspinatus tendon and minimal subacromial bursitis, a chronic lumbar strain with changes of mild right paramedian posterolateral L3-4 disc bulge and mild right posterolateral bulging of the L4-5 disc associated with mild right posterolateral spondylosis. Appellant had a mild broad-based posterior disc bulge at L4-S1 without present evidence of active or chronic nerve root irritation from the back into either lower extremity and neurogenic claudication from the back into either lower extremity. His prognosis was excellent for the neck and low back and it was fair for the right shoulder. Regarding the neck, appellant did not have any factors of disability and he was able to perform all activities. With respect to the right shoulder, he was precluded from repetitive use above shoulder level. Dr. Auerbach indicated that there was no aggravation of an underlying condition and that appellant did not need any further medical treatment for his neck and low back. He stated that treatment for the right shoulder may be necessary in the future. Dr. Auerbach opined that after the August 29, 2000 employment injury, appellant "most probably" would have needed no period of total disability. He reviewed appellant's job description and opined that he could perform the duties of a mail carrier. In a September 10, 2003 Form OWCP-5c, Dr. Auerbach indicated that appellant could work eight hours a day, but he was limited to reaching above the shoulder zero to one hour.

By letter dated February 13, 2004, the Office issued a notice of proposed termination of appellant's compensation based on Dr. Auerbach's August 13, 2003 report. The Office provided

² Dr. Soohoo inadvertently referenced the date of injury as October 13, 2000 as opposed to August 29, 2000. The Board notes, however, that there is no evidence of record pertaining to any other employment-related motor vehicle accident.

30 days in which appellant could respond to this notice. Appellant did not respond within the allotted time period.

By decision dated March 15, 2004, the Office terminated appellant's compensation benefits effective that date.

On the same date as the Office issued its decision, appellant submitted a letter dated March 9, 2004 in response to the proposed termination of compensation stating that he felt pain especially in his lower back and right shoulder and indicated that he was hurt at work five times following his August 29, 2000 employment injuries and that medical treatment was still required.

On April 2, 2004 appellant requested a review of the written record by an Office hearing representative regarding the Office's March 15, 2004 decision. By decision dated August 24, 2004, an Office hearing representative found that the Office did not meet its burden of proof in terminating appellant's compensation and reversed the March 15, 2004 decision. He found that Dr. Auerbach's August 13, 2003 report lacked sufficient rationale to support his opinion that appellant did not have any continuing employment-related residuals. Dr. Auerbach diagnosed several conditions, but failed to explain why appellant did not require further medical treatment for these conditions. The hearing representative instructed the Office to obtain a report from Dr. Auerbach clarifying his opinion.

By letter dated November 17, 2004, the Office asked Dr. Auerbach to provide a supplemental report clarifying his August 13, 2004 opinion as to whether appellant required any further medical treatment and whether he had any continuing employment-related residuals. In a December 1, 2004 report, Dr. Auerbach stated that appellant did not require any further medical treatment for his neck and back. Regarding the right shoulder, he stated that appellant should see a physician two or three times a year due to exacerbations of stress causally related to the accepted employment injuries. He may also need a short course of physical therapy two times a week for three weeks occasionally, perhaps once or twice a year. Appellant did not appear to be a candidate for more aggressive studies or treatments for the shoulder. He did not need injections or surgery, but there was a possibility that he may need a diagnostic and surgical arthroscopic procedure for impingement syndrome with partial acromionectomy and decompression of the space between the clavicle, acromion and rotator cuff.

By letter dated January 11, 2005, the Office advised Dr. Auerbach that his opinion was still unclear. It requested him to clarify whether appellant had any residuals of his August 29, 2000 employment injuries. In a January 19, 2005 letter, Dr. Auerbach referred to his August 13 and December 1, 2004 reports. Dr. Auerbach stated that, by definition, appellant's accepted employment-related injuries were self-limiting and caused pulling or stretching of muscles and tendons, but did not cause any other injuries sufficient to make a different diagnosis. Thus, appellant had recovered from the self-limiting cervical, back and right shoulder strains and that he did not need any further medical treatment. Dr. Auerbach indicated that, although appellant could use some heat and ice at home and perform daily stretching exercises of the neck, low back and right shoulder for the original problems, he did not believe those were truly treatment procedures, but merely supportive home exercises to keep him in shape. He noted that MRI scan results of the lumbar and cervical spines and right shoulder were not related to the August 29, 2000 employment injuries, but rather related to a natural progression of nonindustrial

degenerative disease and aging in a 53-year-old man. Dr. Auerbach opined that appellant did not have any residuals of his accepted employment injuries. By definition, those problems had dissipated and he needed no treatment for these conditions. The other problems and residuals as noted were either due to nonindustrial mild degenerative changes and aging or unrelated post-August 29, 2000 incidents to the body parts. Dr. Auerbach concluded that there was no medical relationship between appellant's residuals and August 29, 2000 employment injuries.

On February 15, 2005 the Office issued a decision terminating appellant's compensation. It accorded special weight to Dr. Auerbach's medical opinion as an impartial medical specialist. In a March 10, 2005 letter, appellant requested an oral hearing before an Office hearing representative.

The Office received requests for authorization for physical therapy dated September 30 and November 23, 2004 and April 26, 2005 that were either unsigned or contained an illegible signature to be administered to the back, neck and scapula. It also received a September 16, 2004 referral for acupuncture which contained an illegible signature.

In a December 2, 2005 decision, a hearing representative affirmed the Office's February 15, 2005 decision on the grounds that Dr. Auerbach's medical opinion was entitled to special weight as an impartial medical specialist in finding that appellant no longer had any residuals or disability causally related to the August 29, 2000 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 his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ Furthermore, in situations where 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.⁵

ANALYSIS -- ISSUE 1

The Board notes that a conflict in the medical opinion evidence was created between Dr. Soohoo, an attending physician, and Dr. Sherman, an Office referral physician, as to whether appellant had any continuing residuals or disability causally related to the August 29, 2000 employment-related cervical, low back and right shoulder strains. Dr. Soohoo opined that

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

appellant continued to have residuals due to the accepted employment injuries, that he had permanent work restrictions and that he required further medical treatment. Dr. Sherman opined that his employment-related conditions had resolved and he had no work-related disability and required no further medical treatment.

The Office referred appellant to Dr. Auerbach, selected as the impartial medical specialist. He provided an accurate factual background, and conducted a thorough physical examination which provided essentially normal results. Dr. Auerbach opined that the MRI scan findings regarding appellant's lumbar and cervical spines and right shoulder were not related to the August 29, 2000 employment injuries. Rather, they were related to the natural progression of nonindustrial degenerative disease and appellant's aging. Dr. Auerbach only recommended home treatment of heat and ice and daily exercises as a means of keeping appellant in shape and not as true treatment procedures for residuals of the accepted employment injuries. He concluded that appellant did not have any residuals of his accepted employment-related conditions as the injuries had resolved, that by definition the injuries were self-limiting and that they required no medical treatment.

The Board finds that Dr. Auerbach's medical opinion is entitled to special weight in finding that appellant no longer has any residuals or disability due to his August 29, 2000 employment injuries as it is sufficiently rationalized and based on a proper factual and medical background.⁶ Thus, the Office met its burden of proof in terminating compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to him to establish that he had any disability causally related to his accepted injuries.⁷ 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.⁸ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁹ 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.¹⁰

⁶ The Board notes that as Dr. Auerbach's original report required elaboration or clarification the Office properly requested the supplemental opinions from him. See *Charles Feldman*, 28 ECAB 314, 320 (1977).

⁷ See *Manuel Gill*, 52 ECAB 282 (2001).

⁸ *Id.*

⁹ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS -- ISSUE 2

The relevant medical evidence regarding any continuing employment-related residuals or disability after February 15, 2005 includes requests for authorization for physical therapy for the back, neck and scapula that were either unsigned or contained an illegible signature. In addition, a September 16, 2004 referral for acupuncture contained an illegible signature. This evidence is insufficient to establish appellant's claim because it is not clear that it is from a physician.¹¹ Therefore, the Board finds that, as the requests for authorization and referral lack proper identification, they do not constitute probative medical evidence sufficient to establish appellant's burden of proof.

As appellant has not submitted rationalized medical evidence establishing that he has any continuing residuals or disability causally related to his employment-related conditions, he has not met his burden of proof.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective February 15, 2005 on the grounds that he no longer had any residuals or disability causally related to August 29, 2000 employment injury. The Board further finds that appellant has failed to establish that he had any continuing employment-related residuals or disability after February 15, 2005.

¹¹ *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (reports not signed by a physician lack probative value).

ORDER

IT IS HEREBY ORDERED THAT the December 2, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 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