

2001 decision, the Board found that the opinion of Dr. Moses Leeb, a Board-certified orthopedic surgeon, constituted the weight of the medical evidence and affirmed the Office's finding that her injury-related disability had ceased effective October 12, 1999. In an October 14, 2003 decision, the Board found that appellant failed to establish any continuing disability causally related to her employment injury after October 12, 1999. The facts and the circumstances of the case are set out in the Board's prior decisions and are hereby incorporated by reference.

Appellant's attorney requested reconsideration by letter dated October 8, 2004 and repeated his previous argument that her claim should be allowed for a sprain/strain injury and somatic dysfunction involving the thoracic spine and ribs. In support of her argument, appellant noted that the emergency room record showed a diagnosis of acute somatic dysfunction of the ribs and thoracic vertebrae and acute right arm strain with paresthesias secondary to the first diagnosis. Counsel also included copies of after care instructions dated April 23, 1998, back to work form signed in April 1998, progress notes dated October 8, 2002 and May 5, 2004, a magnetic resonance imaging (MRI) scan of the thoracic spine from October 11, 2002, emergency room records from April 1988 and documents relating to appellant's return to work in 2003. Medical records dated May 11 and 28 and September 22, 2004 from Dr. Vladimir Djurick, Board-certified in physical medicine and rehabilitation were submitted.

On May 11 and 28, 2004 Dr. Djurick provided the results of trigger point injections. In a September 22, 2004 medical report, Dr. Djurick discussed appellant's medical background from the work-related injury and the results of the trigger point injections and how they supported his opinion that she had originally suffered an injury to the thoracic spine and ribs and that her current disability was a direct and proximate result of the work injury. Dr. Djurick stated that it was his impression that appellant's clinical presentation was consistent with thoracic and right rib dysfunction which had resulted in secondary right shoulder dysfunction and chronic myofascial symptoms, muscle imbalance, scapular winging and crepitus. He stated that the original injury had been misdiagnosed from the beginning and that the "shoulder strain" was actually an injury to the thoracic spine and ribs. In arriving at this conclusion, Dr. Djurick stated that he relied on his knowledge of anatomy and pain referral patterns as well as appellant's initial and subsequent pain diagrams identifying the specific location and character of her pain. He also noted that she had a rather impressive levoscoliosis (curvature) of the thoracic spine and stated that, over time such scoliotic deformities usually lead to degenerative changes of the intervertebral discs and zygapophyseal joints, which was noted on appellant's October 11, 2002 thoracic MRI scan. Dr. Djurick stated that, when persons with spondylosis of the cervical spine sustain a cervical trauma, such as whiplash, chronic neck pain tends to be more prevalent. He additionally stated that it was generally accepted that decreased flexibility predisposes individuals to more severe injury and hence an increased incidence of chronic pain. Dr. Djurick advised that he "suspects" that this may have been the case with appellant, whose injury was to the thoracic spine. He theorized that excessive force on a spinal column that is susceptible to injury "can result" in stretching and or tearing of supportive soft tissue structure and quite possibly injure the joints themselves. Dr. Djurick stated that, although the theory was speculative, it was undeniably rationale. He also stated that he "assumed" that the scoliosis was in part responsible for appellant's inability to recover from the original trauma. Dr. Djurick stated that such trauma could lead to an initiation or acceleration of degenerative cascade (thoracic spondylosis and degenerative disc disease), but Dr. Djurick could not say with a

reasonable degree of medical certainty that that was the case here. He concluded that appellant's claim should have been allowed for sprain/strain and somatic dysfunctions involving the thoracic spine and ribs rather than right shoulder strain. He also stated that Dr. Leeb's conclusions were based on a misguided premise that the symptoms were due to a shoulder strain.

By decision dated December 1, 2004, the Office denied modification of its prior decision. The Office found that the only relevant medical evidence was the September 22, 2004 medical report from Dr. Djuric, but that such report was of diminished probative value and not sufficient to modify the termination of appellant's compensation.

LEGAL PRECEDENT

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.²

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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 appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.³

ANALYSIS

The Office accepted appellant's claim for a sprain of the right shoulder and terminated her compensation benefits effective October 12, 1999 on the grounds that her work-related disability had ceased. The Office found that the opinion of the Office referral physician, Dr. Leeb, constituted the weight of the medical evidence, which the Board affirmed.

In support of her claim for continuing disability, appellant submitted numerous documents which were previously filed and considered by both the Office and the Board. However, the Board's prior decisions are conclusive on the issues adjudicated therein.⁴

The new medical reports submitted with appellant's request for reconsideration of her claim come from Dr. Djuric. The two May 2004 medical reports, which address the trigger point

² *Joseph A. Brown, Jr.*, 55 ECAB ____ (Docket No. 04-376, issued May 11, 2004). *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

³ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁴ *See David E. Newman*, 48 ECAB 305 (1997).

injections, are insufficient as they do not address employment-related disability or residuals causally related to the accepted injury.⁵

Based on the results of the two May 2004 trigger point injections, Dr. Djuric's September 22, 2004 report sets forth his theory that an additional injury to the thoracic spine and ribs occurred as a result of the April 1998 work injury and that appellant's current disability was a direct and proximate result of the work injury. In his report, Dr. Djuric noted appellant's scoliosis of the thoracic spine and stated that overtime this would result in decreased mobility and degenerative changes of the disc, which was confirmed by the October 11, 2002 MRI scan. He also stated that chronic pain tends to be more prevalent in persons with spondylosis of the cervical spine who sustain cervical trauma and that it was generally accepted that decreased flexibility predisposes individuals to more severe injuries and chronic pain. Dr. Djuric "suspected" that this was the case for appellant, only it occurred at the thoracic spine. He stated that excessive force on a spinal column that is susceptible to injury "can result" in stretching and or tearing of supportive soft tissue structure and quite possibly injury to the joints themselves. He further stated that, although the theory was speculative, it was undeniably rationale.

The Board notes that Dr. Djuric examined appellant four and one-half years following her injury. The Board has held that, when diagnostic testing is delayed, uncertainty mounts regarding the cause of the diagnosed condition and a question arises as to whether that testing in fact documents the injury claimed by the employee.⁶ The greater the delay in testing, the greater the likelihood that an event not related to employment has caused or worsened the condition for which the employee seeks compensation. When the delay becomes so significant that it calls into question the validity of an affirmative opinion based at least in part on the testing, such delay diminishes the probative value of the opinion offered.⁷ While Dr. Djuric tried to offer medical reasoning to explain the current significance of appellant's findings with respect to causal relationship to the work injury, the Board notes that he couched his opinion in speculative terms, noted his theory was speculative and further advised that he could not say with a reasonable degree of medical certainty that the work injury led to an initiation or acceleration of the degenerative cascade.⁸ Moreover, although he theorized that appellant's scoliotic deformities made the surrounding soft tissue structures susceptible to stretching and tearing, Dr. Djuric failed to address and/or consider the objective diagnostic testing of record, specifically the March 17, 2002 MRI scan which showed no evidence of a muscle tear.⁹ The need for a detailed well rationalized medical opinion consistent with a proper medical history is especially important since Dr. Djuric did not examine appellant until four and one-half years after her accepted injury.¹⁰ Without any further explanation or rationale, such report is insufficient to establish that

⁵ See *Michael E. Smith*, 50 ECAB 313, 316 n.8 (1999); *Annie L. Billingsley*, 50 ECAB 210, 213 n.20 (1998).

⁶ *Linda L. Mendenhall*, 41 ECAB 532 (1990).

⁷ *Id.*

⁸ 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).

⁹ *Id.*

¹⁰ See *Linda L. Mendenhall*, *supra* note 6.

appellant had a continuing disability or residuals causally related to her employment.¹¹ Consequently, Dr. Djuric's conclusory, speculative and unrationalized medical opinion is insufficient to establish any new or continuing employment-related disability or to create a medical conflict with Dr. Leeb's opinion that the work-related injury resolved.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she had any disability or condition on or after October 12, 1999 causally related to her employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2004 decision of the Office of Workers Compensation Programs is affirmed.¹²

Issued: March 8, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹¹ *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).

¹² At oral argument, appellant's attorney noted that he had additional evidence. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(a). Appellant may resubmit this evidence to the Office, together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).