



for a lumbar sprain and a cervical sprain and paid appropriate benefits. Appellant returned to part-time limited duty as a van driver on June 14, 2004.

After his injury, appellant submitted medical reports variously indicating that he was either totally or partially disabled. In a February 20, 2004 report, Dr. Richard H. Kaplan, a Board-certified physiatrist, opined that his history, examination findings and review of magnetic resonance imaging (MRI) scans and electromyography (EMG) studies were consistent with lumbosacral radiculopathy and aggravation of underlying degenerative joint disease of the spine. He noted that appellant remained disabled for his regular duties.

In a report dated May 13, 2004, Dr. Anthony W. Salem, a Board-certified orthopedic surgeon and an Office referral physician, provided examination findings and opined that appellant had no residuals of his December 27, 2003 work injury. He stated that the MRI scan of the cervical and lumbosacral spine, as well as the EMG of his cervical spine, showed preexisting arthritis in the cervical and lumbar spine with no evidence to suggest new damage to appellant's spine as a result of his work. Dr. Salem found no objective findings and stated that appellant's lack of motion of his cervical and lumbosacral spine was due to illness behavior. He further opined that he was able to perform his prior job duties without any limitations.

In a June 9, 2004 report, Dr. Kaplan disagreed with Dr. Salem that appellant could return to full duty. He opined that he had not recovered from the accepted conditions sustained on December 27, 2003 and that appellant's preinjury job required a much heavier physical exertion. Dr. Kaplan opined, however, that appellant could return to a modified limited-duty motor vehicle operator position for four hours per day as noted in the employing establishment's June 3, 2004 job offer. In subsequent reports, he continued to opine that appellant could only work four hours per day in his modified position and, in a September 29, 2004 report, opined that his ongoing disability was caused by the aggravation of degenerative joint disease sustained on December 27, 2003.

The Office determined that there was a conflict in the medical opinion evidence between Dr. Salem and Dr. Kaplan as to whether appellant had any residual disability from his work-related injury. On July 1, 2004 the Office referred appellant, together with a statement of accepted facts and the entire case file, to Dr. E. Michael Okin, a Board-certified orthopedic surgeon, for an independent medical examination in order to resolve the conflict.

In a report dated August 13, 2004, Dr. Okin reviewed the statement of accepted facts along with the medical evidence of record and presented his examination findings. He diagnosed resolved lumbosacral spine strain, resolved cervical spine strain and advanced degenerative disc disease of the lumbar and cervical spine. Dr. Okin opined that appellant did not have residuals of his work-related conditions and that his present symptomatology was based on his preexisting degenerative disc disease of the cervical spine and lumbosacral spine. He stated that his underlying disc degenerative disease was initially aggravated by the work-related cervical spine and lumbosacral spine sprain, which had subsequently resolved. Dr. Okin further explained that appellant has a chronic degenerative process in his spine and that, based on his history, appellant would not be able to return to his preinjury work status because of his disc degenerative disease. A Form OWCP-5c work capacity evaluation sets forth his current restrictions.

By letter dated September 13, 2004, the Office advised appellant of its proposed termination of his compensation and medical benefits on the grounds that the weight of the medical evidence, as represented by the report of the impartial medical specialist, Dr. Okin, established that he had no residuals from his work-related conditions. He was provided 30 days to submit additional relevant evidence or argument if he disagreed with the proposed action; however, no additional evidence or argument was received.

By decision dated October 25, 2004, the Office terminated appellant's compensation benefits effective the same date.

In an October 28, 2004 letter, appellant disagreed with the Office's decision and requested an oral hearing that was held on July 26, 2005. In an October 5, 2005 report, Dr. Kaplan described appellant's symptoms and findings on examination. He stated that, on December 27, 2003, he sustained an exacerbation of his chronic underlying conditions and concluded that appellant remained "significantly impacted as a result of the injuries sustained on December 27, 2003." Dr. Kaplan further opined that appellant remained partially disabled. Appellant also submitted a duplicate report dated July 20, 2004 from Dr. Mahendra C. Shah, an internist, and duplicate copies of an x-ray report dated October 29, 2002.

By decision dated November 14, 2005, an Office hearing representative affirmed the Office's October 25, 2004 decision.

In a January 17, 2006 letter, appellant requested reconsideration. He argued that Dr. Kaplan's reports of October 5 and November 30, 2005 established continued residual disability. Appellant further argued that Dr. Okin's report was not sufficient to carry the weight of the medical evidence for "the reasons argued at the time of the hearing in this matter." In a November 30, 2005 report, Dr. Kaplan noted that appellant's clinical findings were unchanged and that he remained symptomatic as a result of his work injuries. A duplicate copy of Dr. Kaplan's October 5, 2005 report was also submitted.

By decision dated February 23, 2005, the Office denied modification of its November 14, 2005 decision.

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

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>1</sup> Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>2</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>3</sup> To terminate authorization for medical treatment,

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<sup>1</sup> *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>2</sup> *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>4</sup>

Section 8123(a) provides in pertinent part: “If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”<sup>5</sup> 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.<sup>6</sup>

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

The Office properly found that a conflict existed in the medical opinion evidence between appellant’s physician, Dr. Kaplan and the second opinion physician, Dr. Salem, with regard to whether he had any continuing residuals and disability related to his December 27, 2003 work injury. Dr. Kaplan opined that appellant had not recovered from the accepted conditions sustained on December 27, 2003 while, Dr. Salem opined that he had no residuals of his December 27, 2003 work injury. Accordingly, the Office referred him to Dr. Okin to resolve the conflict.

In a report dated August 13, 2004, Dr. Okin reviewed the evidence of record and reported his findings upon examination. He opined that appellant had recovered from his work-related strains. Dr. Okin also noted that he has a preexisting degenerative condition and explained that, although the preexisting condition was initially aggravated by the work injury, the work injury had resolved and his present symptomatology was based on his underlying degenerative condition. He completed a Form OWCP-5c, which indicated that appellant’s restrictions were due to his preexisting underlying degenerative condition.

The Board finds that the Office properly relied on the impartial medical examiner’s report in determining that appellant’s accepted employment injury had resolved. Dr. Okin’s opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed his medical records. Dr. Okin properly explained that, although he had symptomatology and restrictions, they were attributable to his preexisting underlying degenerative disc disease, noting that the work-related cervical and lumbosacral spine sprains had resolved.

Accordingly, the Office properly accorded special weight to the impartial medical examiner’s findings. Dr. Kaplan’s October 5, 2005 report is insufficient to overcome the weight given the impartial medical specialist that the employment-related injuries had resolved without residuals. Dr. Kaplan essentially reiterated his earlier opinion that appellant sustained an

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<sup>4</sup> *Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, *supra* note 3.

<sup>5</sup> 5 U.S.C. § 8123(a).

<sup>6</sup> *See Roger Dingess*, 47 ECAB 123 (1995); *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

exacerbation of his chronic underlying conditions and remained partially disabled, which gave rise to the conflict resolved by Dr. Okin.

As the weight of the medical evidence establishes that appellant's accepted work-related condition has resolved, the Office properly terminated his wage-loss compensation and medical benefits.

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

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating benefits shifts to appellant.<sup>7</sup> 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.

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 the diagnosed condition and the implicated employment relationship between appellant's diagnosed condition and the implicated employment factors.<sup>8</sup> 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.<sup>9</sup>

### **ANALYSIS -- ISSUE 2**

Subsequent to the Office's termination of benefits, appellant submitted a November 30, 2005 report from Dr. Kaplan, who indicated that his clinical findings were unchanged. He reiterated his opinion that he remained symptomatic as a result of his work injuries.

Dr. Okin, the impartial medical examiner, opined that appellant had no work-related continuing disability as all employment-related conditions had resolved. Dr. Kaplan's report to the contrary is insufficient to overcome the weight of Dr. Okin's report or to create a new conflict in the medical evidence. Dr. Kaplan was on one side of the conflict resolved by Dr. Okin and Dr. Kaplan did not present new findings or rationale to support his opinion.<sup>10</sup> Appellant did not submit any other medical evidence sufficient to establish a continuing work-related condition.

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<sup>7</sup> See *Joseph A. Brown, Jr.*, 55 ECAB \_\_\_ (Docket No. 04-376, issued, May 11, 2004); *Virginia Davis Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

<sup>8</sup> *Juanita Pitts*, 56 ECAB \_\_\_ (Docket No. 04-1527, issued October 28, 2004).

<sup>9</sup> *Bobbie F. Cowart*, 55 ECAB \_\_\_ (Docket No. 04-1416, issued September 30, 2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> See *Jaja K. Asaramo*, 55 ECAB \_\_\_ (Docket No. 03-1327, issued January 5, 2004) (submitting a report from a physician who was on one side of a medical conflict that an impartial specialist resolved is, generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict).

**CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective October 25, 2004. The Board further finds that appellant failed to meet his burden of proof to establish that he had any employment-related disability or medical condition after October 25, 2004 causally related to his December 27, 2004 work-related injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 23, 2006 and November 14, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 2, 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