

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

A.L., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Baltimore, MD, Employer)

**Docket No. 07-876
Issued: August 13, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 12, 2007 appellant filed an appeal of a May 19, 2006 decision of the Office of Workers' Compensation Programs denying modification of its determination that appellant had no disability or continuing residuals subsequent to May 18, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

ISSUE

The issue is whether appellant has established any continuing residuals on or after May 18, 2005 causally related to his accepted employment injury of September 9, 2003.

FACTUAL HISTORY

This case is before the Board for the second time. In a decision dated February 2, 2006, the Board affirmed the Office's May 18 and September 20, 2005 decisions terminating appellant's medical and wage-loss benefits due to his accepted musculoskeletal low back pain, sciatica and radiculopathy, sustained on September 9, 2003, on the grounds that the conditions

had resolved and related residuals had ceased. The Board found that the Office met its burden of proof to terminate appellant's benefits based on the well-rationalized second opinion report of Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.¹

On March 6, 2006 appellant requested reconsideration, indicating that he was still under a doctor's care and was still receiving treatment for his on-the-job injury. He did not submit any additional evidence in support of his request. On March 14, 2006 the Office denied appellant's request for reconsideration on the grounds that he had not raised a substantive legal question or included any new and relevant evidence.

On April 19, 2006 appellant again requested reconsideration. He submitted a report dated March 29, 2006 from Dr. Carey-Walter F. Closson, a treating physician, who stated that he had been treating appellant since December 2005 for low back and bilateral leg pain stemming from a September 2003 work-related accident. Dr. Closson indicated that he had requested a functional capacity evaluation, which might provide a basis for work restrictions. Pending the outcome of the functional capacity examination, he stated that it was reasonable for appellant to perform light duty at work. Appellant submitted an April 14, 2006 report of a functional capacity evaluation performed by Lakshmi Sanks, a physical therapist.

By decision dated May 19, 2006, the Office found that the medical evidence submitted was insufficient to establish that appellant continued to experience residuals from the accepted September 9, 2003 work injury.

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 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

¹ Docket No. 06-65 (issued February 2, 2006).

² *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

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

ANALYSIS

The Board found in its February 2, 2006 decision that the Office met its burden of proof in terminating compensation effective May 18, 2005. Therefore, the burden of proof shifted back to appellant to establish that he had continuing employment-related residuals after that date.⁴ The Board finds that the medical evidence submitted was insufficient to meet his burden of proof.

In a March 29, 2006 report, Dr. Closson stated that he had been treating appellant since December 2005 for low back and bilateral leg pain stemming from a September 2003 work-related accident. He indicated that he had requested a functional capacity evaluation, which might provide a basis for work restrictions. Pending the outcome of the functional capacity examination, he stated that it was reasonable for appellant to perform light duty at work. However, Dr. Closson did not offer a definitive opinion as to whether there was a causal relationship between appellant's current condition and the established work injury. Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁵ Moreover, Dr. Closson did not provide a specific diagnosis or explain how appellant's current condition was related to the original accepted condition. Therefore, his report is of diminished probative value.

Appellant submitted an April 14, 2006 report of a functional capacity evaluation performed by Mr. Sanks, a physical therapist. This report is insufficient to establish that appellant had any continuing residuals on or after May 18, 2005 causally related to his accepted employment injury. A physical therapist is not considered a physician as defined by the Federal Employees' Compensation Act.⁶ Therefore, Mr. Sanks' report is not considered probative medical evidence. As appellant has not submitted a medical report from a qualified physician interpreting the results of the functional capacity evaluation, the April 14, 2006 report lacks probative value.

As appellant has submitted no probative medical evidence establishing that he continues to suffer residuals from employment-related conditions, he has not met his burden of proof to

⁴ See *John F. Glynn*, 53 ECAB 562 (2002). In the instant case, the Board resolved the issue of whether the Office properly terminated appellant's wage-loss and medical benefits effective May 18, 2005 on the grounds that the accepted condition of musculoskeletal low back pain, sciatica and radiculopathy had resolved. A decision of the Board is final upon the expiration of 30 days from the date of the decision. 20 C.F.R. § 501.6(d). Appellant did not seek reconsideration of the Board's decision pursuant to 20 C.F.R. § 501.7(a). Therefore, this issue is *res judicata*. 5 U.S.C. § 8128; *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998). See also *Hugo A. Mentink*, 9 ECAB 628, 629 (1958).

⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ Section 8101(2) of the Act provides in pertinent part as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."

establish entitlement to compensation or medical benefits after May 18, 2005, the date the Office terminated his benefits.⁷

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he was disabled as a result of his accepted employment injuries after May 18, 2005.

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁷ The Board notes that the record on appeal contains additional evidence which was not before the Office at the time it issued its May 19, 2006 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c). *See also* *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit 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)(2).