

benefits effective that date on the grounds that he refused an offer of suitable work.¹ The Board found that the Office failed to develop the medical evidence as to whether appellant could perform the duties of the offered modified position of safety and occupational health specialist. The Board also set aside the Office's April 13, 2005 decision, finding that appellant received an overpayment in the amount of \$2,723.27 for which he was found at fault. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The facts and the history relevant to the present issue are hereafter set forth.²

By letter dated June 19, 2006, the Office issued a notice of proposed termination of appellant's compensation based on a July 6, 2005 medical report of Dr. Sander R. Binderow, an Office referral physician and Board-certified surgeon, who had examined appellant on June 29, 2005. Dr. Binderow reviewed appellant's medical records and reported normal findings on physical examination. He reported that the abdomen was soft and nondistended; that the midline wound was well healed; and that there was no midline hernia and no bulging of the left colostomy wound to indicate a hernia. Dr. Binderow added that although appellant complained of tenderness to touch, "[h]e does not appear to be as tender as he is attempting to be"; that there was no evidence of peritonitis or masses; and that there was evidence of a left inguinal hernia which could be easily reduced. He stated that appellant may have some muscle strain related to work but it should have long resolved two years ago. Dr. Binderow stated that even if appellant had a hernia, he should be able to perform most activities. He related that it was doubtful that appellant's condition was aggravated by anything that happened at work. Dr. Binderow found that any aggravation, although unlikely, was temporary. He stated that any muscle strain should have healed a long time ago even if appellant had a hernia at the colostomy site, which he doubted and that this should not restrict him from working. Dr. Binderow found that a small left inguinal hernia would not prevent appellant from doing any work other than very heavy lifting which could be easily rectified by a small hernia operation and a month-long convalescence. He opined that appellant did not continue to demonstrate objective medical residuals that warranted continued partial disability. Dr. Binderow concluded that appellant could perform his regular work duties. He completed a work capacity evaluation (Form OWCP-5c), which reiterated that appellant could perform his usual work duties with no restrictions.

In a letter dated June 26, 2006, appellant disagreed with the proposed action. He argued that the Office should have submitted Dr. Binderow's report in a timely manner to the Board for review. Appellant requested a medical examination regarding his continuing employment-related residuals and disability.

By decision dated August 15, 2006, the Office terminated appellant's compensation benefits effective July 27, 2006 on the grounds that he no longer had any residuals or disability causally related to his March 7, 2003 employment injury. It found that Dr. Binderow's July 6,

¹ Docket No. 05-1172 (issued June 5, 2006).

² On March 26, 2003 appellant, then a 56-year-old safety and occupational health specialist, filed a traumatic injury claim alleging that on March 7, 2003 he strained his stomach and passed blood as a result of lifting and carrying two heavy boxes which contained bond paper from the first floor to the second floor. He stopped work on April 1, 2003. By letter dated May 28, 2003, the Office accepted his claim for abdominal strain. The Office paid him appropriate compensation. On October 17, 2003 the employing establishment offered appellant a modified safety and occupational health specialist position.

2005 report constituted the weight of the medical opinion evidence as it was comprehensive and well rationalized.

In a letter dated September 28, 2006, appellant requested reconsideration. He submitted an October 21, 2004 report of Dr. Jean Estime, an attending Board-certified internist, who opined that appellant was permanently and totally disabled due to his service-connected condition and secondary conditions of his accepted employment injury, which included perforated diverticulitis of the colon, severe abdominal strain, adhesions, incisional hernia, irritable bowel syndrome, spastic colon, hemorrhoids, diarrhea, constipation, esophageal reflux disease, obesity, aggravation of chronic obstructive pulmonary disease, major depression and severe anxiety. Dr. Estime further opined that his degenerative joint disease, degenerative disc disease, hypothyroid disease and severe chronic obstructive pulmonary disease were secondary to appellant's employment-related injury. She stated that appellant had continuing pain and symptoms related to the diagnosed conditions which were aggravated by his accepted employment injury.

In a decision dated December 21, 2006, the Office denied modification of the August 15, 2006 decision. The medical evidence of record established that appellant's work-related disability had ceased by July 2005 based on Dr. Binderow's July 6, 2005 report.

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

ANALYSIS -- ISSUE 1

In a report dated July 6, 2005, Dr. Binderow, an Office referral physician, examined appellant and reviewed the evidence of record to determine whether appellant had any residuals or disability causally related to his March 7, 2003 employment-related abdominal strain. He reported essentially normal findings upon physical examination. Dr. Binderow opined that appellant no longer had any employment-related residuals or disability as there were no objective findings of any employment-related residuals that warranted continued partial disability. In this regard, he noted that there was no evidence of a midline hernia, that the wound about that area was healed, that the abdomen was soft and nondistended and that there was no evidence of peritonitis or masses. Dr. Binderow stated that appellant may have some work-related muscle strain but it long resolved two years prior. He further stated that even if appellant had a hernia at the colostomy site, which would not restrict him from working. Similarly, Dr. Binderow indicated that a small left inguinal hernia would not prevent appellant from doing any work other

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

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

than very heavy lifting which could be easily rectified by a small hernia operation and a month-long convalescence. The Board notes, however, that the accepted condition was abdominal strain and appellant has not established that the left inguinal hernia is employment related. Dr. Binderow opined that any aggravation was temporary and had resolved. He concluded that appellant could perform his usual work duties with no restrictions.

The Board finds that Dr. Binderow's report is detailed, well rationalized and based upon a complete and accurate history. His opinion represents the weight of the medical evidence in finding that appellant no longer has any residuals or disability causally related to his employment-related abdominal strain. The Board, therefore, finds that the Office met its burden of proof in this case.

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.⁵ 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 factors.⁶ 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.⁷

ANALYSIS -- ISSUE 2

Subsequent to the Office's termination of benefits, appellant submitted Dr. Estime's October 21, 2004 report. Dr. Estime stated that, appellant had continuing residuals and he was permanently and totally disabled due to his employment-related abdominal strain, as well as, his conditions secondary to the accepted condition. Her report predates the termination of appellant's compensation and does not address the issue of whether appellant had any continuing employment-related residuals or disability at the time of the termination. Dr. Estime provided a host of diagnoses which she stated rendered appellant disabled for work. She did not provide sufficient medical rationale for finding appellant disabled due to residuals of his accepted condition.

⁵ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

⁶ *Jennifer Atherson*, 55 ECAB 317 (2004).

⁷ *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation benefits effective July 27, 2006 on the grounds that he no longer had any residuals or disability causally related to his accepted employment injury. The Board further finds that appellant has failed to establish that he had any continuing employment-related residuals or disability after July 27, 2006.

ORDER

IT IS HEREBY ORDERED THAT the December 21 and August 15, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 11, 2007
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