

injuries resolved without residuals. The Board found that the weight of the medical evidence rested with Dr. Patrick G. Laing, a Board-certified orthopedic surgeon and impartial medical examiner. Dr. Laing submitted a March 15, 1996 report explaining that x-rays and clinical findings demonstrated no residuals of the accepted November 7, 1976 and October 3, 1982 lumbar strains, herniated L4-5 disc and September 29, 1977 L5-S1 discectomy. The law and the facts of the case as set forth in the Board's prior decision are hereby incorporated by reference.

In a September 20, 2005 letter, appellant requested reconsideration. He asserted that new medical evidence demonstrated that he continued to have disabling residuals of the accepted conditions on and after June 22, 1996.²

In an April 21, 2005 report, Dr. Michael J. Seel, an attending Board-certified orthopedic surgeon, noted a history of lumbar and bilateral knee pain. He commented that appellant sustained a 1977 "lifting-type" work injury but that no medical records were presently available. Dr. Seel also noted 1995 and 1997 knee surgeries. He obtained x-rays showing degenerative disc disease at L3-4 and L5-S1.³ Dr. Seel diagnosed lumbar stenosis at L4-5, a disc protrusion at L5-S1, advanced degenerative joint disease of both knees and status post multiple surgical procedures. He administered injections to both knees. Dr. Seel obtained knee x-rays on June 2, 2005 and administered additional knee injections on June 2 and August 19, 2005. On August 19, 2005 he diagnosed right trochanteric bursitis and administered an injection.

In a June 17, 2005 report, Dr. Michael J. Platto, an attending Board-certified physiatrist, provided a history of injury and treatment. On examination, he noted restricted lumbar motion and bilaterally positive straight leg raising tests. Dr. Platto stated an impression of status post September 1977 L4-5 laminectomy, degenerative lumbar disc disease and severe degenerative joint disease of both knees. In a September 12, 2005 letter, he noted diminished two-point discrimination in the L5 dermatomes bilaterally. Dr. Platto opined that appellant had a 4.5 percent permanent impairment of the lower extremities due to L5 nerve root dysfunction.

By decision dated October 12, 2006, the Office affirmed the termination of appellant's compensation benefits. The Office found that the reports of Dr. Seel and Dr. Platto were insufficient to outweigh that of Dr. Laing.⁴ The Office explained that Dr. Seel did not opine that the lumbar postsurgical changes required additional treatment or in any way disabled appellant for work. Also, Dr. Seel did not relate the diagnosed knee and hip conditions to the accepted injuries. The Office further found that Dr. Platto did not address whether appellant had any work-related residuals.

² In his September 20, 2005 letter, appellant also claimed a schedule award for a ratable impairment of the lower extremities. There is no decision of record directly adjudicating the schedule award claim. The Board notes, however, that the October 12, 2006 decision affirmed that appellant had no residuals of the accepted conditions.

³ A March 4, 2005 lumbar magnetic resonance imaging (MRI) scan showed postsurgical changes at L5-S1 on the right with a small disc protrusion and severe stenosis at L4-5.

⁴ In an April 10, 2006 telephone memorandum, the Office noted advising appellant's attorney "that a new impartial was needed." The Office noted that the examination would be scheduled after preparation of a new statement of accepted facts. There is no indication of record that the Office scheduled an impartial medical examination prior to issuing the October 12, 2006 decision.

LEGAL PRECEDENT

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁵ 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.⁶

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits.⁷ For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation.⁸ The fact that a condition's etiology is unknown does not relieve the claimant of the burden of establishing a causal relationship by the weight of the medical evidence.⁹

ANALYSIS

Appellant submitted additional medical evidence following the Board's January 12, 2005 decision affirming the prior termination of his compensation benefits. He asserted that these reports were sufficient to establish that he had disabling residuals of the accepted lumbar injuries on and after June 22, 1996, the date the Office terminated his compensation.

Dr. Seel, an attending Board-certified orthopedic surgeon, submitted an April 21, 2005 report noting a 1977 "lifting-type" work injury. However, he stated that there were "no medical records" available regarding this injury. Dr. Seel's opinion is therefore of diminished probative value as it is based on an incomplete medical history.¹⁰ He diagnosed lumbar stenosis at L4-5, an L5-S1 disc protrusion, right trochanteric bursitis and bilateral knee conditions. But Dr. Seel did not provide medical rationale supporting that these conditions were related to the accepted lumbar injuries. The lack of rationale further diminishes the probative value of his opinion.¹¹

Dr. Platto, an attending Board-certified physiatrist, submitted June 17 and September 12, 2005 reports diagnosing status post 1977 L4-5 laminectomy and degenerative disease of the lumbar spine and both knees. He also observed diminished sensation in the L4-5 dermatomes

⁵ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁶ *Id.*

⁷ See *Virginia Davis-Banks*, 44 ECAB 389 (1993); see also *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992).

⁸ *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁹ *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).

¹⁰ See *John W. Montoya*, 54 ECAB 306 (2003).

¹¹ *Deborah L. Beatty*, 54 ECAB 340 (2003).

bilaterally. However, Dr. Platto did not opine that any of the diagnosed conditions were pathophysiologically related to the accepted injuries. Thus, his opinion is insufficient to establish that appellant had disabling residuals of the accepted injuries on and after June 22, 1996.¹²

The Board finds that the weight of the medical evidence continues to rest with Dr. Laing, a Board-certified orthopedic surgeon and impartial medical examiner, who provided a well-rationalized report based on the complete medical record explaining that appellant no longer had residuals of the accepted lumbar injuries after March 15, 1996. Neither Dr. Seel nor Dr. Platto provided medical rationale, based on a complete and accurate factual and medical history, opining that appellant had disabling residuals of the accepted lumbar injuries on and after June 22, 1996. Thus, the Board finds that appellant has not met his burden of proof to reinstate his compensation benefits.

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing a continuing work-related disability on and after the Office terminated his compensation benefits on June 22, 1996.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 12, 2006 is affirmed.

Issued: May 11, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

¹² *Id.*