

2005 when she pulled a patient toward her and experienced pressure.¹ In a May 12, 2005 note, Dr. Thomas F. Werner, a Board-certified family practitioner, diagnosed back strain secondary to injury incurred while “lifting or moving” a patient. Appellant stopped work on May 10, 2005 and returned on May 14, 2005. The Office accepted this claim for sprain/strain of the lumbar and thoracic regions.

On August 16, 2005 appellant filed a second traumatic injury claim stating that she injured her lower back on that day while maneuvering a patient.² She stopped work on August 16, 2005 and returned on August 17, 2005. In an August 16, 2005 report, Dr. Douglas J. Herbek, a Board-certified family practitioner, noted that appellant had a history of back problems since May 2005 and diagnosed low back strain. On August 22, 2005 he related appellant’s claim that her supervisor asked to perform tasks at work which were outside her physical restrictions. The Office accepted appellant’s claim for lumbar and thoracic sprain/strain and paid appropriate compensation.

On September 12, 2005 Dr. Herbek diagnosed low back strain and indicated that appellant initially injured her back in May 2005 but reinjured it at work on August 16, 2005. On September 30, 2005 he noted appellant’s belief that her back was worsening despite her work restrictions, physical therapy and medication.

In a November 4, 2005 report, Dr. Adeleke Badejo, a Board-certified neurosurgeon, noted appellant’s medical history, complaints of back pain and an October 4, 2005 magnetic resonance imaging (MRI) scan report. He diagnosed degenerative disc disease at L1-2 with mild spinal stenosis but stated: “I cannot explain [appellant’s] symptoms on the basis of the mild stenosis at L1-2. My feeling is that her symptoms could be due to degenerative disc disease. This would not, however, explain the radicular component of her complaint.” Dr. Badejo recommended that appellant return to work in a limited-duty capacity on a graduated schedule.

In a November 4, 2005 duty status report, Dr. Herbek indicated that appellant could return to work with restrictions as of November 7, 2005. He agreed with Dr. Badejo’s recommendations concerning appellant’s return to a limited-duty job assignment. Appellant did not return to work and also ceased attending physical therapy.

In a December 2, 2005 report, Dr. Herbek noted that, despite his and Dr. Badejo’s recommendations, appellant had not returned to work and had not resumed physical therapy. He diagnosed low back strain and neck strain. On December 12, 2005 Dr. Herbek explained that Dr. Badejo had given appellant permission to return to work with restrictions. However, he advised that appellant had not yet returned to work. Dr. Herbek explained that he was unable to opine whether appellant could work a full eight hours per day, as she had not yet attempted to work the four hours recommended.

¹ The claim was assigned Office file number 112029594.

² The claim was assigned Office file number 112030908. File number 112029594 and file number 112030908 were combined on October 7, 2005.

On January 9, 2006 the Office referred appellant for a functional capacity evaluation. In a January 11, 2006 statement, appellant asserted that she could not undergo a functional capacity evaluation because she could not work. On January 18, 2006 the Office informed her that the employing establishment had made her a limited-duty job offer which the Office found suitable. Appellant declined the offered position on January 21, 2006, stating: "I have a degree as a Licensed Practical Nurse. I must lay down four to five times on my bed throughout the day because of back pain. I am also receiving [Social Security Disability Insurance] because I am unable to work due to my back pain." On January 25, 2006 the Office informed appellant that the employing establishment had offered her a position as a telephone operator, which the Office determined to be suitable. In a January 28, 2006 statement, appellant attributed her disability to her osteoarthritis and degenerative disc disease. She stated: "I know I am unable to do the job that you offered because of my pain and my need to lay down when I feel I must." On February 27, 2006 the Office advised appellant that it had determined that her justifications for refusing the limited-duty job offer were invalid.

On March 2, 2006 the Office referred appellant, together with a statement of accepted facts, to Dr. Thomas Connolly, a Board-certified orthopedic surgeon, for a second opinion examination.

Appellant underwent the functional capacity evaluation on April 25, 2006. In a May 2, 2006 report, Neal Wachholtz, a physical therapist, determined that appellant's tests were invalid and that he was unable to obtain accurate information concerning her condition due to "poor effort during functional testing." He also noted that, despite displaying full range of motion during testing, appellant "also displays significant pain behaviors." Mr. Wachholtz explained that appellant reported "severe limitations," stating that she "cannot do anything," "totally cannot work" and "cannot keep a job." He stated that he could not recommend permanent restrictions, as he was unable to reconcile appellant's "subjective complaints of pain and her portrayed level of disability" with the objective findings. However, Mr. Wachholtz estimated appellant's work capacity through her general strength and findings concerning her degenerative disc disease, concluding that she was probably capable of working full time in a light to medium-duty position.

In an April 28, 2006 report, Dr. Connolly reviewed appellant's medical history and performed a physical examination, finding evidence of degenerative changes of the spine. He noted that appellant ambulated with a shuffling gait but had complete range of motion of the neck and bilateral upper extremities. Dr. Connolly also found that appellant's pain seemed restricted to the lumbar region, but that she did not report lumbar pain when her head, neck and shoulders were manipulated. He determined that appellant had underlying nonemployment osteoarthritis to which her complaints of thoracolumbar pain were related. Dr. Connolly concluded that appellant's subjective complaints of pain were disproportionate to her objective findings and diagnostic test results. In a May 11, 2006 supplemental report, he diagnosed nonemployment-related osteoarthritis and degenerative changes at L1-2 and explained that thoracic and lumbar strains generally resolved over the course of a few months. Dr. Connolly noted that more than a year had elapsed since appellant's injury and any disability should have already resolved.

On June 7, 2006 the Office issued a notice of proposed termination of appellant's compensation.

Following the Office's proposed termination, appellant submitted several medical reports. In a May 30, 2006 report, Dr. Anne K. Morse, an internist, diagnosed degenerative joint disease and degenerative disc disease. On June 5, 2006 she diagnosed cervical and lumbar degenerative disc disease as well as back pain secondary to degenerative disc disease and degenerative joint disease, gastritis, depression and menopausal syndrome. In a June 19, 2006 report, Dr. Morse noted appellant's refusal to return to work. She explained that appellant's degenerative disc disease was likely a preexisting condition, which "certainly was aggravated by her injury but was not something that should cause her any long-term disability." Dr. Morse did not believe that appellant's degenerative disc disease should be "a cause for disability" and stated that appellant's claimed employment-related disability was "minimal compared to the disability she is allowing herself to have." Other treatment notes from Dr. Morse addressed appellant's status and symptoms.

By decision dated July 11, 2006, the Office terminated appellant's compensation effective the same day.

On August 5, 2006 appellant appealed to the Board. On October 26, 2006 the Board dismissed the appeal at appellant's request so that she could pursue reconsideration before the Office.³ In support of her reconsideration request, appellant provided additional copies of reports previously received into the record, including Dr. Herbek's August 22 and December 2, 2005 reports and Dr. Morse's May 30, June 5 and 19, 2006 reports.

By decision dated January 31, 2007, the Office denied modification of its July 11, 2006 termination decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation because the weight of medical evidence of record does not support continuing

³ Docket No. 06-1895 (issued October 26, 2005).

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

employment-related disability. In reports prepared through November and December 2005, Dr. Herbek recommended physical therapy but advised that appellant was capable of working in a limited-duty position. Appellant attended only one session of the recommended physical therapy and did not return to work. Dr. Herbek referred appellant for an evaluation with Dr. Badejo, who provided a November 4, 2005 report concluding that appellant was capable of returning to work. In November 18 and December 2, 2005 reports, Dr. Herbek concurred with Dr. Badejo concerning appellant's work capacity. However, appellant did not return to work.

The Office referred appellant to Dr. Connolly for a second opinion examination. In an April 28, 2006 report, Dr. Connolly presented his physical examination findings and the diagnostic test results, noting that both the examination and previous MRI scans supported a diagnosis of osteoarthritis and degenerative changes of the lumbar spine. He explained that appellant's conditions were preexisting, nonemployment changes and that her accepted injury should have resolved within several months. Dr. Connolly also indicated that appellant's subjective complaints of pain were far more "impressive" than the diagnostic testing results or physical examination findings suggested. He found that her MRI scan report showed minor degenerative changes and that she exhibited full range of motion and limited tenderness on physical examination. However, Dr. Connolly noted that appellant walked with a shuffling gait and presented complaints of pain that were not supported by the objective evidence. In a May 11, 2006 report, he stated that her lumbar and thoracic strain should have resolved within a few months, yet it had been a year since her injury. Based upon his report, the Office determined that appellant no longer had employment-related disability or condition. The Board finds that Dr. Connolly reviewed of the diagnostic testing results, detailed his physical examination findings and provided explanation and rationale supporting his conclusion that appellant's employment-related condition had resolved. Accordingly, the medical evidence establishes that appellant no longer has residuals from her employment-related injury. The Office met its burden of proof in terminating her compensation benefits.

After the Office proposed to terminate appellant's benefits, she submitted reports from Dr. Morse. However, these reports provide limited support for appellant's continuing disability. In a June 19, 2006 report, Dr. Morse stated that appellant's degenerative disc disease was likely a preexisting condition but that the May 7 and August 16, 2005 traumatic injuries aggravated it. However, she also indicated that she did not believe that appellant's degenerative disc disease should be "a cause for disability." Dr. Morse stated that appellant's claimed employment-related disability was "minimal compared to the disability she is allowing herself to have." To the extent that she supported that appellant's condition remained causally related to her accepted employment injuries, she provided an equivocal opinion, stating that while the employment injuries aggravated a preexisting condition she questioned why such an aggravation would be ongoing and cause for disability. The Board has held that a medical opinion which is speculative or equivocal in nature is of limited probative value on the issue of causal relationship.⁷ Other treatment records from Dr. Morse did not provide additional reasoning in support for an ongoing employment-related condition.

⁷ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

Accordingly, the Board finds that the Office properly terminated appellant's compensation benefits effective July 11, 2006.

LEGAL PRECEDENT -- ISSUE 2

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 she had an employment-related disability, which continued after termination of compensation benefits.⁸

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.⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof in establishing that she had any disability causally related to her employment after July 11, 2006. Following the Office's termination of her compensation benefits, appellant submitted several medical reports already received into the record and duly considered by the Office. Specifically, appellant provided August 22 and December 2, 2005 reports from Dr. Herbek and May 30, June 5 and 19, 2006 reports from Dr. Morse. However, these reports had already been reviewed and considered by the Office before the termination of appellant's benefits and are insufficient to establish that she had an employment-related condition or disability after July 11, 2006. Appellant did not submit any new medical evidence explaining why any continuing condition or disability would be causally related to her employment. Therefore, the Board finds that appellant did not meet her burden of proof in establishing that she had continuing employment-related disability after July 11, 2006.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective July 11, 2006 and she did not meet her burden of proof in establishing that she had any employment-related disability after July 11, 2006.

⁸ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

⁹ *Victor J. Woodhams*, 41 ECAB 345 (1989).

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 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