

FACTUAL HISTORY

On April 5, 2002 appellant, then a 44-year-old clerk, sustained a hernia as a result of pulling a bulk mail carrier. She noted that the hernia was located near the site of a previous June 25, 2001 surgery. Appellant stopped work on April 5, 2002 and returned to work on April 13, 2002.

In an April 25, 2002 medical report, Dr. Douglas J. Kaderabek, an attending Board-certified surgeon, stated that appellant sustained a ventral hernia and back strain. He restricted her from lifting and carrying more than 30 pounds. Dr. Kaderabek indicated that appellant's regular job required her to lift and carry up to 70 pounds. Appellant accepted the employing establishment's offer for a limited-duty position which was based on Dr. Kaderabek's April 25, 2002 report and returned to work on April 13, 2002. By letter dated July 23, 2002, the employing establishment issued a notice of removal to appellant based on her unsatisfactory absence from work from May 23 to June 29, 2002.

By letter dated March 14, 2003, the Office accepted appellant's claim for ventral hernia.¹

On August 21, 2003 Dr. Kaderabek released appellant to return to work on August 26, 2003. She was restricted from lifting more than 25 pounds.

On December 7, 2003 appellant filed a claim alleging that she sustained a recurrence of disability from August 14 through 25, 2003. She returned to work on August 26, 2003. By letter dated January 21, 2004, the Office advised appellant that the evidence submitted was insufficient to establish her recurrence of disability claim. It addressed the factual and medical evidence she needed to submit to establish her claim.

In a January 15, 2004 report, Dr. Kaderabek stated that appellant was six weeks' status post combined abdominoplasty and ventral hernia repair. He related that her surgical wounds were mostly closed and well healed. Appellant could return to work and was restricted from lifting or carrying more than 30 pounds. He would follow appellant on a yearly basis for her bariatric surgery. By letter dated January 23, 2004, the employing establishment requested that Dr. Kaderabek provide whether appellant's restrictions were solely due to her employment-related ventral hernia or due to her nonwork-related abdominoplasty and/or bariatric surgery.

In a February 13, 2004 report, which was received by the Office on March 11, 2004, Dr. Kaderabek stated that appellant's 30-pound restriction was indefinite and based on the repair of her ventral hernia. She continued to experience pain along her incision if she tried to exert herself or lift anything heavy. Dr. Kaderabek concluded that appellant had reached maximum medical improvement.

By letter dated March 25, 2004, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions, to Dr. Berj Antreasian, a Board-certified internist, for a second opinion medical examination to determine whether appellant had any residuals causally related to her accepted employment-related ventral hernia.

¹ The Office authorized appellant's December 12, 2003 surgery to repair her ventral hernia.

By decision dated May 3, 2004, the Office found that appellant did not sustain a recurrence of disability from August 14 through 26, 2003 due to her April 5, 1982 employment injury.

On June 2, 2004 the Office received Dr. Antreasian's April 12, 2004 report. He reviewed a history of appellant's April 5, 1982 employment injury, medical treatment, and social and family background. Dr. Antreasian noted her chief complaint of pain in both knees. He reported essentially normal findings on physical examination. Dr. Antreasian found no evidence of a ventral hernia. He noted appellant's complaint of residual discomfort from the hernia surgery with slight discomfort on lifting heavy objects. Dr. Antreasian stated that she could perform her usual work duties if they did not require her to lift more than 30 pounds. He stated that the restriction was due to the accepted employment injury. Dr. Antreasian recommended that appellant wear an abdominal support to reduce her discomfort. He concluded that there was no objective evidence to support appellant's disability for work due to discomfort in her knees.

In a May 14, 2004 report, Dr. Antreasian clarified his recommendation regarding the use of abdominal support. He stated that appellant's discomfort was minimal and that she had reached maximum medical improvement. Dr. Antreasian opined that no further treatment of the employment-related ventral hernia was required.

On June 15, 2004 the Office received appellant's May 7, 2004 request for an oral hearing before an Office hearing representative regarding the May 3, 2004 decision.

By decision dated July 7, 2005, an Office hearing representative set aside the Office's May 3, 2004 decision and remanded the case for further medical development. The hearing representative found that Dr. Antreasian's April 12, 2004 report was not clear as to whether appellant's lifting restriction was due to residuals of the accepted employment injury. If it was determined that the restriction was work related, then the Office should determine whether appellant was entitled to compensation. The hearing representative stated that this issue did not relate to the period August 2003 through June 2004 because appellant testified at an April 19, 2005 hearing that she received back pay for this period as a result of a settlement agreement of a grievance that she filed against the employing establishment. At the hearing, she noted that in August 2004 the employing establishment changed her work shift from 12:00 p.m. to 8:30 p.m. to 5:30 p.m. to 2:00 a.m. which resulted in a loss of four and one-half hours of work per day. Appellant testified that she could not work all the hours of her new shift due to her sleep apnea condition. The hearing representative noted that an offer of light-duty work must consider not only the accepted employment condition, but also nonemployment-related conditions. He instructed appellant to submit medical evidence related to her inability to work night hours.

In a July 19, 2005 letter, the Office requested that Dr. Antreasian clarify his opinion regarding the causal relationship between appellant's work restriction and accepted employment injury and whether appellant had returned to her preinjury physical state.

By letter dated August 1, 2005, Dr. R.B. Patel, an employing establishment physician, submitted medical literature regarding sleep apnea.

On September 16, 2005 the Office was advised that Dr. Antreasian was no longer in practice. By letter dated September 21, 2005, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to Dr. Abdolaziz M. Ardalan, a Board-certified surgeon, for a second opinion medical examination.

In a December 5, 2005 report, Dr. Ardalan reviewed a history of appellant's abdominal surgeries including her hernia repair. He reported normal findings on physical examination. Dr. Ardalan stated that it was not advisable that appellant lift more than 30 to 40 pounds at a time based on her hernia repair. He stated that higher weight with more frequency increased the chance of a recurrence of a hernia. Dr. Ardalan opined that, at the time of his examination, appellant did not sustain a recurrence of the employment-related ventral hernia. He related that she should be able to perform the duties of a distribution clerk provided that the weight restriction was considered. Dr. Ardalan concluded that appellant had reached maximum medical improvement with regard to her employment-related hernia repair.

By letter dated February 3, 2006, the Office requested that Dr. Ardalan address whether appellant had any measurable objective evidence of active pathology and disability due to the accepted employment injury. The Office stated that, if this was not established then, were the restrictions set forth in his December 5, 2005 report prophylactic in nature and not due to the employment-related condition.

In a February 10, 2006 report, Dr. Ardalan stated that appellant did not sustain a recurrence of her repaired ventral hernia. He found no clinical evidence of residual pathology or disability related to the hernia repair. Dr. Ardalan stated that the 30- to 40-pound lifting restriction was solely prophylactic because the scar of the repair did not have the same tensile strength as normal tissue.

By letter dated February 21, 2006, the Office requested that Dr. Kaderabek review and comment on Dr. Ardalan's reports. In a February 27, 2006 report, Dr. Kaderabek stated that he agreed with Dr. Ardalan's findings.

By letter dated March 13, 2006, the Office issued a notice of proposed termination of appellant's compensation. It found that Dr. Ardalan's opinion, as supported by Dr. Kaderabek, constituted the weight of the medical opinion evidence in establishing that she no longer had any residuals of her April 5, 1982 employment injury. The Office found that the restrictions set forth by Dr. Ardalan were prophylactic in nature and, thus, were not a compensable factor of appellant's employment. It also found that appellant's sleep apnea condition was not work related and, thus, she was not entitled to wage-loss compensation for partial disability because this condition prevented her from working at night. The Office provided 30 days in which appellant could respond to the proposed action. She did not respond within the allotted time period.

By decision dated April 24, 2006, the Office terminated appellant's compensation effective April 21, 2006. On May 6, 2006 appellant requested an oral hearing before a hearing representative.

In an April 12, 2006 letter, appellant responded to the Office's March 13, 2006 proposed termination notice. She contended that she was entitled to compensation for lost wages. Appellant stated that she would have been able to perform her regular work duties if Dr. Antreasian had not placed restrictions on her which caused the employing establishment to assign her light-duty work.

In a July 26, 2005 report, Dr. Michael G. Lykens, a Board-certified internist, opined that appellant should be assigned day shift work due to her sleep apnea condition. In a May 14, 2004 disability certificate, Dr. Kaderabek stated that appellant would be able to return to work on May 17, 2004 with no restrictions. Following the hearing, appellant submitted documents related to her assignment of limited duty at the employing establishment.

In a July 30, 2007 decision, an Office hearing representative affirmed the April 24, 2006 decision. The hearing representative noted that the Office's decision terminated medical benefits only because she was not receiving disability compensation. He found that appellant no longer had any residuals of her April 5, 1982 employment injury based on the medical opinions of Dr. Kaderabek and Dr. Ardalan. The hearing representative further found that appellant was not entitled to compensation for the period August 2004 to August 2005. He found that Dr. Kaderabek's May 14, 2004 report established that appellant was not disabled during the claimed period.

LEGAL PRECEDENT -- ISSUE 1

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.²

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate authorization for medical benefits based on the opinion of Dr. Ardalan, an Office referral physician, who reviewed a history of appellant's April 5, 1982 employment-related ventral hernia. Dr. Ardalan reported his normal findings physical examination and opined that appellant had fully recovered from her accepted employment injury. He explained that there was no objective evidence of residuals or disability causally related to the employment-related injury. Dr. Ardalan stated that his 30 to 40 pound work restriction was solely prophylactic in nature.

The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.³ Dr. Ardalan fully discussed the history of injury and explained that there were no objective findings to establish that appellant had any continuing employment-

² *T.P.*, 58 ECAB ____ (Docket No. 07-60, issued May 10, 2007); *John F. Glynn*, 53 ECAB 562 (2002).

³ *See Ann C. Leanza*, 48 ECAB 115 (1996).

related residuals. The Board finds that Dr. Ardalan's opinion is detailed, well rationalized and based upon a complete and accurate history. Moreover, his findings were supported by Dr. Kaderabek, appellant's attending physician, who reviewed Dr. Ardalan's reports and agreed that appellant no longer had any residuals of her accepted employment injury. The Board finds that Dr. Ardalan's opinion represents the weight of the medical evidence in finding that appellant no longer has any residuals causally related to her employment-related ventral hernia. The Board, therefore, finds that the Office met its burden of proof in this case.

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any residuals causally related to her accepted injury.⁴ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁵ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁷ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the claimant.⁸

ANALYSIS -- ISSUE 2

The relevant medical evidence regarding continuing employment-related residuals submitted by appellant after April 24, 2006 consists of Dr. Lykens' July 26, 2005 report which stated that appellant should be assigned day shift work due to her sleep apnea condition. The Board notes that the Office has not accepted appellant's claim for sleep apnea. Dr. Lykens did not provide any opinion to establish that the diagnosed condition was causally related to appellant's April 5, 1982 employment-related ventral hernia. Dr. Kaderabek's May 14, 2004 disability certificate stated that appellant would be able to return to work on May 17, 2004 with no restrictions. He did not opine that she had any continuing residuals due to her accepted employment injury.

⁴ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

⁵ See *Manuel Gill*, 52 ECAB 282 (2001).

⁶ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

⁷ *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The Board finds that appellant did not submit the necessary rationalized medical evidence to substantiate that the claimed continuing residuals on or after April 24, 2006 were causally related to her April 5, 1982 employment injury.

LEGAL PRECEDENT -- ISSUE 3

An employee seeking benefits under the Federal Employees' Compensation Act⁹ has the burden of proof to establish the essential elements of her claim by the weight of the evidence.¹⁰ For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.¹¹ Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.¹²

Under the Act the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹³ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.¹⁴ An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.¹⁵ When, however, the medical evidence establishes that the residuals or sequela of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.¹⁶ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁷ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ See *Amelia S. Jefferson*, 57 ECAB ___ (Docket No. 04-568, issued October 26, 2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

¹¹ See *Amelia S. Jefferson*, *supra* note 10; see also *David H. Goss*, 32 ECAB 24 (1980).

¹² See *Edward H. Horton*, 41 ECAB 301 (1989).

¹³ *S.M.*, 58 ECAB ___ (Docket No. 06-536, issued November 24, 2006); *Bobbie F. Cowart*, *supra* note 8; *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

¹⁴ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

¹⁵ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁶ See *Manuel Gill*, *supra* note 5.

¹⁷ *Elizabeth Stanislav*, *supra* note 6.

whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.¹⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the claimant.¹⁹

The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.²⁰

ANALYSIS -- ISSUE 3

Appellant claimed that she was partially disabled for work during the period August 2004 to August 2005. However, she did not submit medical evidence demonstrating partial disability for this period of time due to her accepted ventral hernia condition.

The medical literature submitted by Dr. Patel is insufficient to establish appellant's claim of continuing residuals. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.²¹

Appellant has failed to submit any rationalized medical opinion evidence establishing that she was unable to work during the claimed period. She has failed to establish that she was disabled and thus, is not entitled to wage-loss compensation for the period claimed. The Board finds that appellant has not established her claim for wage-loss compensation for the period August 2004 to August 2005.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's medical benefits effective April 21, 2006. The Board further finds that appellant did not establish continuing employment-related residuals after April 21, 2006. Lastly, the Board finds that appellant has not established entitlement to wage-loss benefits for the period August 2004 to August 2005.

¹⁸ *Kathryn E. Demarsh, supra* note 7.

¹⁹ *Bobbie F. Cowart, supra* note 8.

²⁰ *See William A. Archer, 55 ECAB 674 (2004); Fereidoon Kharabi, 52 ECAB 291 (2001).*

²¹ *Gloria J. McPherson, 51 ECAB 441 (2000); William C. Bush, 40 ECAB 1064, 1075 (1989).*

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2008
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