

FACTUAL HISTORY

This case has previously been on appeal twice before the Board. In decisions dated March 22, 2004¹ and March 14, 2006,² the Board affirmed an Office hearing representative's July 8, 2002 decision which affirmed the Office's August 28, 2001 termination of appellant's compensation benefits effective that date and the Office's September 10, 2004 decision which denied modification of its termination decision, respectively, on the grounds that she no longer had any disability causally related to her January 15, 1999 employment injury. The Board found that Dr. Degan's June 13, 2001 medical opinion that appellant's condition was fixed and stable and that she could return to work without restriction was sufficient to establish that she no longer had any employment-related disability. It also found that appellant failed to submit rationalized medical evidence establishing that she had any continuing employment-related disability after August 28, 2001. In the March 14, 2006 decision, the Board also affirmed the Office's March 29, 2005 decision, denying appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a). The facts and the circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference.³ The facts and the history relevant to the present issue are set forth.

Following the Board's March 14, 2006 decision, appellant requested reconsideration before the Office on August 2, 2006. She submitted Dr. Degan's May 24 and July 11, 2006 letters which stated that she was being followed for right upper extremity pain including, the shoulder and elbow. Dr. Degan related that, since appellant's April 6, 2000 right elbow surgery, she had a 20-pound lifting work restriction. He indicated that her current 20-pound lifting restriction was due to her shoulder and elbow conditions. Dr. Degan noted that appellant had not returned to her previous job which required her to lift 70 pounds. In the July 11, 2006 letter, Dr. Degan also stated that he was clearing up any confusion regarding his June 13, 2001 treatment note which stated that appellant could go to work "without restriction." He stated that he was authorizing a full-time light-duty job offer with a 20-pound lifting restriction already built into the job offer.

By decision dated November 1, 2006, the Office denied appellant's request for reconsideration on the grounds that it was not timely filed and failed to establish clear evidence of error.⁴

In a decision dated July 2, 2007, the Office set aside the November 1, 2006 decision. It found that appellant's August 2, 2006 request for reconsideration was timely filed and addressed

¹ Docket No. 03-568 (issued March 22, 2004).

² Docket No. 05-1140 (issued March 14, 2006).

³ On January 15, 1999 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim alleging that she experienced pain in her right elbow on that date after she struck it on a metal container. The Office accepted the claim for right lateral epicondylitis and paid appropriate compensation.

⁴ Appellant appealed the Office's November 1, 2006 decision to the Board. Based on a request by appellant to dismiss her appeal of the Office's decision, the Board issued an order on September 14, 2007 dismissing the appeal. Docket No. 07-343.

the merits of her claim. The Office denied modification of its August 28, 2001 termination decision. It found that the contents of Dr. Degan's May 24, 2006 letter were identical to the contents of his July 11, 2006 letter and only addressed the July 11, 2006 letter. The Office found that Dr. Degan rephrased information that was contained in his prior May 18, 2004 letter and November 15, 2004 progress note.⁵

LEGAL PRECEDENT

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating benefits shifts to appellant.⁶ In order to prevail, she 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.

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.⁷ 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.⁸

ANALYSIS

In the March 22, 2004 and March 14, 2006 decisions, the Board found that the Office met its burden of proof to terminate appellant's compensation benefits effective August 28, 2001. Therefore, the burden of proof shifted to appellant to establish that she still has residuals of her accepted employment injury.⁹ Dr. Degan's May 24 and July 11, 2006 letters contain identical information, stating that appellant had a 20-pound lifting work restriction since her April 6, 2000

⁵ In the May 18, 2004 letter, Dr. Degan stated that appellant's ability to return to work was probably best characterized by a physical capacity evaluation (PCE) which indicated that she had a 20-pound lifting capacity. He further stated that his June 2001 opinion that appellant was able to return to full-duty work as a letter carrier was an error because he did not believe that the PCE results supported her ability to do so. Dr. Degan also stated that his best recollection indicated that appellant could return to a full-work schedule performing light-duty work as she had an intervening back strain which decreased her ability to work even more in the interim between the PCE and the shoulder becoming stable and a letter he sent to the Office. Dr. Degan concluded that the March 2001 restrictions should remain in effect. In the November 15, 2004 treatment note, Dr. Degan opined that appellant could return to work with a 20-pound lifting restriction. He noted that the restriction had been in effect since the surgery related to her shoulder and elbow conditions. Dr. Degan concluded that appellant could not lift 70 pounds as required by her job.

⁶ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

⁷ *Jennifer Atherson*, 55 ECAB 317 (2004).

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

⁹ See cases cited *supra* note 7.

right elbow surgery and that she was unable to return to her job which had a 70-pound lifting requirement. In the July 11, 2006 letter, Dr. Degan stated that he was authorizing a full-time light-duty job offer with a 20-pound lifting restriction already built into the job offer. This report is similar to that in his 2004 report. However, Dr. Degan did not adequately explain the basis for changing his medical opinion three years after releasing appellant to return to work. He failed to provide sufficient explanation for the change in his prior June 13, 2001 opinion that appellant could work without restriction. The Board finds that his May 24 and July 11, 2006 letters are insufficient to establish that appellant has any continuing disability causally related to her January 15, 1999 employment injury.

CONCLUSION

The Board finds that appellant has failed to establish that she had any continuing employment-related disability after August 28, 2001.

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 24, 2008
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