

alleged that her neck felt stiff. The employing establishment indicated that appellant declined medical treatment. She did not stop work. On March 14, 2005 the Office accepted appellant's claim for thoracic or lumbosacral neuritis or radiculitis.

In a May 18, 2005 report, Dr. James J. Harms, a Board-certified orthopedic surgeon and treating physician, noted appellant's history of injury and treatment. He reviewed a magnetic resonance imaging (MRI) scan dated February 1, 2005 and noted that it showed a slight degenerative bulge at L5-S1. Dr. Harms opined that he did not believe that surgery would help appellant, but advised that she should remain active. He diagnosed degenerative disc disease at L5-S1 with a superimposed back strain. On September 26, 2005 Dr. Harms noted that appellant had tailbone pain and tingling into the legs which bothered her at night. He also indicated that she had neck pain, shoulder pain and aches in lots of places. Dr. Harms diagnosed low back pain from premature degenerative disc disease at L5-S1 and leg tingling. He recommended that appellant undergo electromyogram (EMG) and nerve conduction testing.

In an October 6, 2005 report, Dr. Victoria Johnson, a Board-certified physiatrist, diagnosed myofascial pain syndrome with neuropathic symptoms in the lower extremities and no evidence of radiculopathy. She recommended that appellant continue her current restrictions which included a 15-pound lifting and pulling restriction and avoid repetitive bending.

In a November 16, 2005 report, Dr. Harms indicated that appellant's leg and back were still bothersome and that she was not responding to conservative treatment. He recommended a discogram and spinal fusion surgery. On November 29, 2005 Dr. Harms determined that appellant had degenerative disc disease at L4-5 and L5-S1 with a negative provocative test of computerized tomography (CT) discogram of L4-5 and L5-S1. He opined that appellant's upper back, mid back, arm and leg pain might be due to her degenerative disc disease or from peripheral neuropathy, arthritis or fibromyalgia. Dr. Harms recommended a second opinion examination. He completed an undated duty status report advising that appellant was totally disabled for work beginning January 8, 2006.¹ In a March 22, 2006 report, Dr. Harms advised that appellant continued to have tingling into her feet and hands, as well as back and left knee pain. He indicated that appellant had not worked for some time. Dr. Harms reiterated that appellant should be referred to a physician specializing in physical medicine and rehabilitation for treatment of her symptoms.

In a June 13, 2006 report, Dr. Thomas Sutter, Board-certified in family medicine and an associate of Dr. Harms, noted appellant's history of injury and treatment. He conducted a physical examination and noted that appellant had full range of motion of the cervical, thoracic and lumbosacral spines with mild tenderness in the lumbosacral area. Dr. Sutter diagnosed chronic back pain with a history of degenerative disc disease of the lumbosacral spine. He

¹ Appellant stopped work on January 10, 2006. In a February 1, 2006 memorandum, the employing establishment notified her that it proposed to remove her from her position as food service worker for failure to register proper cash register sales for transactions from December 7 to 20, 2005 and for failure to follow instructions. On February 27, 2006 the employing establishment issued a final decision and removed appellant from her position effective March 7, 2006. Appellant filed CA-7 forms for the period March 8 through December 1, 2006. The Office paid appellant compensation for total wage loss for that period.

recommended restrictions of no lifting over 25 pounds and no twisting of the back. Dr. Sutter recommended a functional capacity evaluation.

By letter dated August 9, 2006, the Office provided Dr. Sutter with a copy of appellant's position description and advised him that the physical requirements included: light lifting under 15 pounds; light carrying under 25 pounds occasionally; pushing occasionally; reaching above the shoulder; use of fingers; both hands required; walking and standing four hours per day; and repeated bending. The Office indicated that appellant had worked six hours per day, five days per week. It requested that Dr. Sutter provide his opinion as to whether appellant could perform the duties of the date-of-injury position.

In an August 16, 2006 response, Dr. Sutter indicated that he had seen appellant for one visit and recommended a functional capacity evaluation. He opined that "appropriate restrictions were no lifting over 25 pounds and avoid twisting her back." Dr. Sutter also indicated that it appeared that appellant's restrictions were consistent with her current job position.

On September 28, 2006 the Office issued a notice of proposed termination of compensation. It found that the report of Dr. Sutter established that appellant had no continuing work-related disability as a result of her May 21, 2004 employment injury. Appellant was allotted 30 days to submit additional evidence or argument.

In a September 28, 2006 report, Dr. Sutter indicated that he was examining appellant for the purpose of obtaining an impairment rating for a schedule award. He noted that she did not obtain functional capacity evaluation. Dr. Sutter determined that appellant had mild tenderness in the lumbosacral area, no paravertebral spasm, normal range of motion, full extension and good flexion of the lumbosacral spine, negative straight leg raising test, normal deep tendon reflexes, normal sensory examination of the lower extremities and no muscle atrophy of the lower extremities. He diagnosed chronic back pain and noted that she did not really have findings on discogram or lumbar CT scan other than degenerative changes and there was no evidence of spinal stenosis or foraminal stenosis. Dr. Sutter determined that appellant's physical examination was normal. He indicated that she did not wish for him to complete the impairment rating as she wished to have another physician do the rating.

On October 13, 2006 appellant underwent a functional capacity evaluation.

By decision dated December 1, 2006, the Office terminated appellant's compensation benefits effective that day. It found that she did not submit any medical documentation to negate the opinion of her attending physician, Dr. Sutter. The Office found that the weight of the medical evidence supported that appellant had no continuing disability or residuals due to the injury of May 21, 2004.

On December 18, 2006 appellant requested a hearing, which was held by telephone on April 11, 2007.²

The Office subsequently received an October 3, 2006 report from Dr. Jian Li, a Board-certified physiatrist, who diagnosed chronic neck and low back pain and cervical and lumbar spondylosis.

The Office also received a copy of a November 23, 2005 CT scan lumbar spine discogram read by Dr. Joseph Barkmeier, a Board-certified diagnostic radiologist, who found that appellant had degenerative disc disease at L4-5 and L5-S1 with a negative provocative test at L4-5 and L5-S1.

In a report dated March 22, 2007, Dr. Srinivas Sunkavally, a Board-certified physiatrist, indicated that electrodiagnostic findings were indicative of C6-7 root irritation with no evidence of peripheral entrapment neuropathy. In a report dated March 26, 2007, he indicated that he administered an epidural steroid injection that day at L5-S1. The Office also received a May 7, 2007 report from a mental health therapist.

In an undated letter, appellant listed her medications and contended that nothing alleviated the pain in her low back and neck.

By decision dated June 19, 2007, the Office hearing representative affirmed in part the December 1, 2006 decision which terminated appellant's compensation for wage loss. The Office hearing representative found that the medical evidence did not establish that appellant had recovered from the accepted condition and vacated that portion of the Office's December 1, 2006 decision which terminated her entitlement to medical benefits. The Office hearing representative directed the Office to refer appellant for a second opinion examination to determine whether she continued to have a medical condition causally related to the May 21, 2004 injury.³

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation

² During the hearing appellant alleged that she was sent to Dr. Sutter by the employing establishment. Subsequent to the hearing the Office received additional documents. They included court documents in which appellant pled guilty to a charge of theft from the employing establishment in the amount of less than \$300.00 between December 1, 2005 and January 31, 2006. Appellant entered the plea on April 3, 2007 and was fined and placed on probation for one year and ordered to perform 40 hours of public service. The employing establishment also provided a notification of personnel action dated March 7, 2006 indicating that appellant was removed that date for failure to register proper cash register sales transaction on nine days between December 7 and 19, 2005 and failure to follow instructions.

³ Any matters pertaining to the further development directed by the hearing representative are not before the Board on the present appeal as the record contains no final decision of the Office on any such matter prior to the filing of the present appeal on October 9, 2007. See 20 C.F.R. § 501.2(c).

⁴ *Curtis Hall*, 45 ECAB 316 (1994).

without establishing either that the disability has ceased or that it is no longer related to the employment.⁵

ANALYSIS -- ISSUE 1

The Board finds that the weight of the medical evidence is represented by Dr. Sutter, Board-certified in family medicine, who submitted a well-rationalized opinion based upon a complete and accurate factual and medical history.

In a June 13, 2006 report, Dr. Sutter noted appellant's history of injury and treatment and conducted a physical examination. He determined that appellant had full range of motion of the cervical, thoracic and lumbosacral spines with mild tenderness in the lumbosacral area. Dr. Sutter diagnosed chronic back pain with a history of degenerative disc disease of the lumbosacral spine and opined that she could work with restrictions of no lifting over 25 pounds and no twisting of the back. He also recommended a functional capacity evaluation. On August 16, 2006 Dr. Sutter noted that appellant's restrictions were appropriate and consistent with her current job position. In a September 28, 2006 report, he diagnosed chronic back pain. Dr. Sutter determined that appellant had an essentially normal examination of the lower extremities and noted that she did not have findings on discogram or lumbar CT scan other than degenerative changes. There was no evidence of spinal stenosis or foraminal stenosis. The Board finds that his report supports that appellant was able to perform the duties of her date-of-injury position.

The Board notes that appellant submitted reports from other attending physicians. However, Dr. Harms, the only physician who opined that appellant was totally disabled and unable to work, noted disability beginning January 8, 2006. He did not offer any opinion regarding her ability to return to work on or after December 1, 2006. Dr. Harms also indicated in several reports that appellant's condition was caused by several nonaccepted conditions, such as degenerative disc disease at L5-S1, peripheral neuropathy, arthritis or fibromyalgia.⁶ The Board notes that appellant was paid compensation for total wage loss from March 18 to December 1, 2006. Thereafter, Dr. Harms did not submit any reports explaining how appellant was disabled on or after December 1, 2006 as a result of her accepted condition, such that she was unable to work. The record contains no other current medical evidence addressing whether appellant's accepted conditions of thoracic or lumbosacral neuritis or radiculitis caused any continuing disability for work.

The Office properly accorded the weight of the evidence to Dr. Sutter. The Board finds that Dr. Sutter's reports establish that appellant had no work-related disability on or after December 1, 2006, thereby supporting the Office's December 1, 2006 termination of her wage-loss compensation

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁶ The Office accepted appellant's claim for thoracic or lumbosacral neuritis or radiculitis. See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury).

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.⁷

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 claimant's diagnosed condition and the implicated employment factors. 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

Following the termination of compensation, appellant submitted additional medical evidence. In an October 3, 2006 report, Dr. Li diagnosed chronic neck and low back pain and cervical and lumbar spondylosis. In reports dated March 22 and 26, 2007, Dr. Sunkavally noted that appellant had C6-7 root irritation with no evidence of peripheral entrapment neuropathy. However, these records do not address whether appellant's work-related condition caused any disability for work on or after December 1, 2006. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹

The Office received a diagnostic report from Dr. Barkmeier who determined that appellant had degenerative disc disease at L4-5 and L5-S1 with a negative provocative test at L4-5 and L5-S1. However, this report merely reported findings and did not contain an opinion regarding the cause of the reported condition or disability. The Office also received a May 7, 2007 report from a mental health therapist. However, a mental health therapist is not considered a physician for the purposes of the Act.¹⁰

None of appellant's physicians provided sufficient medical rationale explaining how and why the accepted conditions of thoracic or lumbosacral neuritis or radiculitis caused or contributed to her disability for work after December 1, 2006. Thereafter, appellant has failed to meet her burden of proof.

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

⁸ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁹ *Michael Smith*, 50 ECAB 313 (1999).

¹⁰ *See Bradford L. Sutherland*, 33 ECAB 1568 (1982).

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation benefits effective December 1, 2006. The Board finds that appellant did not meet her burden of proof to establish that she was disabled on or after December 1, 2006 causally related to her May 21, 2004 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 19, 2007 decision of the Office of Workers' Compensation Programs' hearing representative is affirmed.

Issued: June 6, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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