

of the right breast and bilateral knee sprains. On October 26, 2004 appellant was placed on the periodic rolls.

The record contains an August 13, 2004 report from appellant's treating physician, Dr. Yolande Bernard, a treating physician, who stated that she sustained injuries to her knees, right hand, right breast and lower back when she fell at work on August 12, 2004. Dr. Bernard indicated that appellant had experienced sciatica for many years, as a result of a prior work injury and that she wore bilateral knee braces for chronic knee pain. She diagnosed: "[s]tatus post WRI on August 12, 2004; [v]ertebral derangement due to acceleration/deceleration injury; [a]cute traumatic strain/sprain of the lumbosacral paraspinal muscles and ligaments, rule out HNP [herniated nucleus pulposus;] [m]yofascitis; [b]lunt trauma to chest and right breast contusion; [s]prain injury, blunt trauma to the: [k]nees -- rule out internal derangement; chronic knee pain rule out any new pathology; [r]ight hand, [l]eft foot, rule out lumbosacral radiculopathy."

On October 7, 2004 Dr. Jacquelin Emmanuel, a Board-certified orthopedic surgeon, performed a fitness-for-duty examination for the employing establishment. In a report dated October 7, 2004, she concluded that appellant had a "marked" degree of disability related to her accepted work injury, but could return to work in a sedentary position. Dr. Emmanuel diagnosed: resolved sprain of the cervical spine; resolved sprain of the right shoulder; resolving sprain of the lumbar spine; contusions of both knees; and preexisting arthritis of both knees.

The record contains a December 7, 2004 report of a magnetic resonance imaging (MRI) scan of the lumbar spine, which revealed a foraminal disc herniation at L2-3; a broad-based disc herniation at L4-5, extending into the right and left neural foramen and a small broad-based disc bulge at L5-S1. A December 10, 2004 report of an MRI scan of the right knee showed a torn meniscus at the posterior horn, thinning of the anterior horn of the lateral meniscus, a small effusion and an area of a vascular necrosis in the anterior aspect of the lateral condyle. A December 14, 2004 report of an MRI scan of the left knee revealed a tear in the posterior horn of the medial meniscus, joint effusion and severe osteoarthritis. Findings were also suspicious for chondromalacia patellar.

The record contains notes and attending physician's reports for the period September 8, 2004 through January 19, 2005 from Dr. Bernard, who stated that appellant was disabled due to the accepted employment injury, for an undetermined period of time.

Appellant submitted a report dated February 9, 2005 from Dr. James E. Henry, a Board-certified osteopath, specializing in orthopedics, who indicated that she had a long-standing history of multiple repetitive use injuries, including the accepted August 11, 2004 work injury. Dr. Henry's examination revealed increased lumbar lordosis, with spasm. He found varus deformity of the knees with crepitus through the arch of motion. Bilateral knee motion was 5 to 110 degrees with pain and swelling. Straight leg raising was positive in the seated position on the right at 60 degrees. After reviewing x-rays and MRI's scan of the knees and lumbar spine, Dr. Henry diagnosed multilevel disc herniations at L2-3, L3-4 and L5-S1. He stated that appellant's bilateral knee symptoms were consistent with arthritis and meniscal tears, which may be related to multiple work injuries. Dr. Henry indicated that appellant was unable to work.

The Office referred appellant to Dr. Sol Farkas, an orthopedic surgeon, for a second opinion examination. Dr. Farkas was asked to provide an opinion as to whether appellant continued to be disabled as a result of her accepted condition and whether the accepted condition had resolved. In a report dated February 28, 2005, he opined that appellant had no orthopedic disability related to the industrial injury and that her ongoing complaints of knee pain were not causally related to the accepted injury. Dr. Farkas noted that appellant had sustained previous back injuries, the first of which occurred 20 years before and that she had experienced ongoing lower back problems ever since. Examination of the lumbar spine revealed 90 degrees of forward flexion and 30 degrees of lateral bending. Deep tendon reflexes were 2+. Dr. Farkas found negative straight leg raising and no spasm or crepitus on static positioning or during active range of motion. Appellant had full range of motion of the knees, with no effusion or boggiess bilaterally. Apley, McMurray and Drawer tests were negative. Quadriceps to patellar tendons were intact and there was no retropatellar crepitus. Dr. Farkas diagnosed resolved lumbar sprain and resolved contusion of both knees, with exacerbation of preexisting osteoarthritis. In an accompanying work capacity evaluation, he stated that appellant had reached maximum medical improvement and could return to work with no restrictions.

The Office found a conflict in medical opinion between Dr. Farkas and appellant's treating physicians. In order to resolve the conflict, the Office referred appellant, together with the entire medical record and a statement of accepted facts, to Dr. Donald Forman, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion as to whether she was disabled from work and whether her accepted condition had resolved. In a report dated March 28, 2005, Dr. Forman opined that appellant was capable of returning to her date-of-injury job and that her employment injury had resolved. He diagnosed status post right shoulder sprain; status post sprain of the lumbosacral spine; and status post bilateral knee contusions. Examination revealed no tenderness over the right shoulder or acromioclavicular joint; no deformity and no external or internal rotation. Sensation, motor power and reflexes were intact. Examination of the knees revealed no popliteal swelling, deformity, fluid or local heat. The patella was mobile. There was full extension of both knees, but no flexion of the right knee. Examination of the lumbosacral spine revealed tenderness over the spine and buttocks. Dr. Forman found no buttock or paravertebral muscle spasm and no scoliosis. Forward flexion was to 30 degrees with pain and extension was to 0 degrees. There were no inclinations or rotations due to pain. In the supine position, straight leg raising was to 0 degrees and appellant was unable to perform double leg lowering or to elevate either leg against gravity. In the seated position, straight leg raising was to 80 degrees and she was able to elevate either leg against gravity. Double leg lowering was intact. Dr. Forman noted that appellant used a brace on the left knee and ambulated with a cane in the right hand, with a left-sided limp. He stated that, although there certainly was evidence of preexisting degenerative disease involving both knees and degenerative diseases involving the lumbosacral spine, his physical examination revealed no objective physical findings that were causally related to the August 12, 2004 injury. Noting that appellant had reached maximum medical improvement, Dr. Forman recommended that she receive "periodic observation by her treating physician every four to six weeks as indicated." In an accompanying work capacity evaluation, Dr. Forman indicated that appellant was capable of performing her usual job.

On September 19, 2005 the Office notified appellant that it proposed to terminate her medical and compensation benefits, on the grounds that she had no further residuals or disability

resulting from her accepted injury. Appellant was afforded 30 days to submit additional evidence or argument relevant to the termination issue.

Appellant submitted notes, attending physician's reports and work capacity evaluations from Dr. Bernard for the period April 6, 2005 through January 13, 2006, noting that she was unable to work. She also submitted numerous physical therapy reports.

By decision dated January 23, 2006, the Office terminated appellant's compensation benefits effective that date. The Office found that the weight of medical evidence was encompassed in Dr. Forman's March 28, 2005 report, which established that appellant's injury-related disability ceased no later than January 23, 2006.¹

On February 19, 2006 appellant requested review of the written record. By decision dated May 23, 2006, an Office hearing representative affirmed the January 23, 2006 termination decision.

On May 7, 2007 appellant, through her representative, requested reconsideration. The representative contended that the Office improperly terminated appellant's compensation because she continued to suffer disability as a result of her accepted injury. Further, the representative argued that the Office failed to accept all injuries and conditions sustained by appellant as a result of the August 12, 2004 injury, including: multiple level disc herniations at L2-3, L3-4, L5-S1, with right-sided symptoms and bilateral knee symptoms consistent with arthritis and meniscal tears. In support of the reconsideration request, appellant submitted duplicates of documents previously received and reviewed by the Office, including: a copy of the March 9, 2006 letter from the Office to Dr. Forman; statement of accepted facts; questions posed to the referee examiner; MRI scan reports dated December 7, 10 and 14, 2004; a February 9, 2005 report from Dr. Henry; and attending physician's reports from Dr. Bernard dated September 9, November 9 and December 14, 2005 and February 17, 2006.

By decision dated July 26, 2007, the Office denied modification of its previous decisions, finding that the weight of medical evidence established that no disability existed with respect to the August 12, 2004 work injury as of January 23, 2006. The Office further found that the medical evidence of record did not support the expansion of appellant's claim to include additional, more serious conditions.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.² After it has determined that an employee has disability causally related to her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to

¹ The Board notes that, although the Office notified appellant of its intent to terminate compensation and medical benefits, the January 23, 2006 order terminated only her compensation benefits, on the grounds that she no longer had any disability causally related to her accepted injury.

² *Paul L. Stewart*, 54 ECAB 824 (2003).

the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that she had disability causally related to her accepted injury.⁵ 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 medical and factual background, supporting such a causal relationship.⁶ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ Rationalized medical evidence is 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. 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 rationalized medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸ Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.⁹

Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."¹⁰ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.¹¹

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective January 23, 2006.

³ *Elsie L. Price*, 54 ECAB 734 (2003).

⁴ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁵ *Manuel Gill*, 52 ECAB 282 (2001).

⁶ *Id.*

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹⁰ 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

¹¹ *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

The Office properly determined that a conflict existed in the medical opinion evidence as to whether appellant had any disability due to her accepted conditions. On the one hand, appellant's treating physicians, Dr. Bernard and Dr. Hanley, opined that she was disabled due to her accepted conditions and was unable to work, even with restrictions. On the other hand, the Office's second opinion physician, Dr. Farkas, opined that appellant had no orthopedic disability related to the industrial injury and that her ongoing complaints of knee pain were not causally related to the accepted injury.

In order to resolve the conflict, the Office referred appellant to Dr. Forman for an impartial medical examination and an opinion as to whether she was disabled from work. Dr. Forman reviewed the entire record and statement of accepted facts and performed a thorough examination of appellant. In his March 28, 2005 report, Dr. Forman provided detailed findings of his examination and diagnosed status post right shoulder sprain; status post sprain of the lumbosacral spine and status post bilateral knee contusions. Dr. Forman opined that appellant was capable of returning to her date-of-injury job and that her employment injury had resolved. He stated that, although there certainly was evidence of preexisting degenerative disease involving both knees and degenerative diseases involving the lumbosacral spine, his physical examination revealed no objective physical findings that were causally related to the August 14, 2004 injury. Noting that appellant had reached maximum medical improvement, Dr. Forman recommended that she receive "periodic observation by her treating physician every four to six weeks as indicated." In an accompanying work capacity evaluation, Dr. Forman indicated that appellant was capable of performing her usual job.

The Board finds that the Office properly relied on Dr. Forman's March 28, 2005 report in determining that appellant was not disabled as a result of her accepted employment injury. His opinion is sufficiently well rationalized and based upon a proper factual background. Dr. Forman not only examined appellant thoroughly, but also reviewed all medical records. He reported accurate medical and employment histories. The Office properly accorded special weight to the impartial medical specialist's findings.¹²

Appellant did not submit any rationalized medical evidence to overcome the weight of Dr. Forman's opinion or to create a new conflict. She submitted notes, attending physician's reports and work capacity evaluations from her treating physician, Dr. Bernard, who was on one side of the conflict. Reports from a physician who was on one side of a medical conflict resolved by an impartial specialist, are generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict.¹³ Dr. Bernard summarily indicated that appellant was disabled from work. However, he did not explain how her condition was physiologically related to the accepted employment injury. Therefore, his reports are of limited probative value. Appellant also submitted physical therapy notes in support of her claim of continuing disability. However, physical therapists do not qualify as

¹² *Bryan O. Crane*, 56 ECAB 713 (2005).

¹³ *See Jaja K. Asaramo*, 55 ECAB 200 (2004).

“physicians” as defined by the Act. Therefore, their opinions are of no probative value.¹⁴ As the weight of the medical evidence establishes that appellant was no longer disabled as a result of her condition, the Office properly terminated her compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.¹⁵ To establish a causal relationship between the condition claimed, as well as any attendant disability and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual 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 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. 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 rationalized medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁸ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any additional medical conditions causally related to her accepted injury. The Office accepted appellant’s claim for a lumbosacral sprain, contusions of the right breast and bilateral knee sprains. On appeal, appellant’s attorney contends that the Office should expand the class of accepted conditions to include all injuries and conditions sustained by appellant as a result of the August 12, 2004 injury, including: multiple level disc herniations at L2-3, L3-4, L5-S1, with right-sided symptoms and bilateral knee symptoms consistent with arthritis and meniscal tears. A review of the medical evidence does not reveal a reasoned medical opinion on causal relationship establishing additional employment-related conditions.

¹⁴ Section 8101(2) of the Act provides as follows: “(2) ‘physician’ includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.”

¹⁵ *Jaja K. Asaramo, supra* note 13.

¹⁶ *Jennifer Atkerson, 55 ECAB 317 (2004)*.

¹⁷ *Jacqueline M. Nixon-Steward, supra* note 7.

¹⁸ *Leslie C. Moore, supra* note 8.

¹⁹ *Ernest St. Pierre, supra* note 9.

Dr. Henry indicated that appellant had a long-standing history of multiple repetitive-use injuries. After reviewing x-rays and MRI's scan of the knees and lumbar spine, he diagnosed multilevel disc herniations at L2-3, L3-4 and L5-S1 and stated that appellant's bilateral knee symptoms were consistent with arthritis and meniscal tears, which may be related to multiple work injuries. Dr. Henry did not express a definitive opinion that, or explain how, appellant's diagnosed conditions were causally related to the accepted August 12, 2004 injury. Rather, he attributed her conditions to multiple injuries over a period of years. Therefore, Dr. Henry's speculative report is of limited probative value and does not support appellant's claim to expand the scope of accepted conditions.

Dr. Bernard's reports do not support appellant's claim that she sustained additional employment-related conditions due to the accepted employment injury. Following his initial examination of appellant following the August 12, 2004 injury, he stated that she sustained injuries to her knees, right hand, right breast and lower back when she fell at work on August 12, 2004. Dr. Bernard diagnosed: "status post WRI on August 12, 2004; vertebral derangement due to acceleration/deceleration injury; acute traumatic strain/sprain of the lumbosacral paraspinal muscles and ligaments, rule out HNP; myofascitis; blunt trauma to chest and right breast contusion; sprain injury, blunt trauma to the: right hand, left foot, knees -- rule out internal derangement; chronic knee pain -- rule out any new pathology; rule out lumbosacral radiculopathy." However, he did not opine that all of the diagnosed conditions were causally related to the accepted injury. In fact, Dr. Bernard indicated that appellant had experienced sciatica for many years, as a result of a prior work injury and that she wore bilateral knee braces for chronic knee pain. As he did not provide a rationalized medical opinion explaining how appellant's diagnosed conditions were causally related to the accepted injury, his report is of diminished probative value. The Board notes that Dr. Bernard did not diagnosis multilevel disc herniations and meniscal tears, which were identified by appellant's representative as additional conditions. The remaining reports of record from Dr. Bernard are devoid of a rationalized opinion explaining the nature of the relationship between the accepted injury and the claimed conditions. Therefore, they also are insufficient to establish appellant's claim.

As Dr. Henry indicated, MRI scan reports revealed disc herniations, torn menisci and osteoarthritis. However, as these reports did not contain an opinion as to the cause of these conditions, they are of limited probative value.²⁰

The Board notes that both Dr. Farkas and Dr. Forman opined that appellant did not suffer from additional conditions as a result of the August 12, 2004 injury. Dr. Farkas opined that appellant's ongoing complaints of knee pain were not causally related to the accepted injury. He noted that appellant had sustained previous back injuries, the first of which occurred 20 years before and that she had experienced ongoing lower back problems ever since. Dr. Forman stated that, although there certainly was evidence of preexisting degenerative disease involving both knees and degenerative diseases involving the lumbosacral spine, his physical examination revealed no objective physical findings that were causally related to the August 14, 2004 injury. These reports substantially weaken appellant's claim.

²⁰ *Michael E. Smith*, 50 ECAB 313 (1999).

The Board finds that appellant has failed to meet her burden of proof to establish that the additional conditions claimed are causally related to the accepted employment injury.²¹ The fact that a condition is mentioned in a medical report along with other accepted conditions does not infer that it is related to the work injury. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there was a causal relationship between her claimed condition and her employment.²² Accordingly, the Office properly limited the accepted conditions to lumbosacral sprain, contusions of the right breast and bilateral knee sprains.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation benefits effective January 23, 2006, on the grounds that she no longer had any disability due to her accepted employment injury. The Board further finds that appellant failed to establish that she sustained additional employment-related conditions due to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 26, 2007 is affirmed.

Issued: June 16, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

²¹ *Jaja K. Asaramo*, *supra* note 13.

²² *Patricia J. Glenn*, 53 ECAB 159 (2001).