

work intermittently but last worked on June 3, 1981. The Office paid appropriate compensation for temporary total disability.

In an August 12, 2002 report, Dr. Crispin See, Board-certified in psychiatry and neurology and appellant's treating physician, stated:

“[Appellant] continues to suffer from residuals of her work-related condition with regard to her chronic ... low back pain, neck pain and thoracic pain. The last magnetic resonance imaging [MRI] scan showed chronic degenerative changes.... [Appellant] has continued to complain of chronic pain that prevents her from being gainfully employed. [Her] previous work injury of June 2, 1980 is the contributing factor to her chronic low back and neck pain and thoracic symptoms.

“[Appellant] has been felt to be disabled from work on the basis of her ongoing chronic symptoms dating back to a previous evaluation in 1996.

“[Appellant] is not medically capable of performing her date[-]of[-]injury job due to active residuals of her work-related medical condition. She continues to have pain, tenderness, and spasm in her paraspinal muscles as well as the findings on the MRI [scan] of the cervical and lumbar spine. At this time [appellant] is considered to be disabled from work.”

In order to determine appellant's current condition and any residuals of her accepted conditions, the Office referred appellant for a second opinion examination with Dr. Harvey O'Phelan, Board-certified in orthopedic surgery. In an October 10, 2002 report, Dr. O'Phelan found that appellant did not have any active residuals stemming from her low back, thoracic or cervical spinal strains. He stated that it was quite evident, from an orthopedic standpoint, that she should be able to perform the obligations that were associated with her employment as a ward clerk. Dr. O'Phelan noted that her injuries were of mild strains superimposed on degenerative disc disease.

In a report dated November 20, 2002, Dr. O'Phelan opined that appellant's work injury was not currently contributing to the preexisting degenerative disc disease of the cervical, dorsal and lumbar spinal regions. Noting that it has been 20 years since the occurrence of the original work incident, he advised that appellant had sustained a sprain/strain type of soft tissue injury which would have been expected to resolve within three to six months. Dr. O'Phelan advised that this was supported by the medical evidence contemporaneous to the original work injury.

The Office found that Dr. O'Phelan's report created a conflict in the medical evidence regarding whether appellant still experienced orthopedic residuals from the June 1980 employment injury. The Office referred appellant to Dr. Richard C. Strand, Board-certified in orthopedic surgery, for an impartial examination to resolve the conflict in the medical evidence.

In a report dated September 3, 2003, Dr. Strand reviewed the medical records and the statement of accepted facts and listed findings on examination. He stated that appellant's subjective complaints of diffuse tenderness were unrelated to her low back injury, cervical and thoracic strains of June 1980. Dr. Strand found no spasm or tenderness of the thoracolumbar spine and noted she was significantly obese. The cervical spine was reported as normal.

Dr. Strand noted degenerative changes on review of the diagnostic studies. He opined that appellant was capable of returning to her job as a ward clerk. After 23 years of a nonorganic pain syndrome, Dr. Strand was suspicious of secondary gain.

In a supplemental report dated April 20, 2004, Dr. Strand stated that, based on his orthopedic and neurological examination, appellant had no objective findings that would support ongoing residuals of her accepted strains of the low back, cervical and thoracic spine. He stated that appellant had degenerative arthritis which was present at the time of her 1980 work injury and had progressed in the ensuing 23 years as part of the normal aging process. This progression would have occurred in the same manner had the work incident not occurred. Dr. Strand opined that appellant had long since attained maximum medical improvement from the 1980 work incident.

In order to determine whether appellant still had residuals stemming from her accepted psychological condition, the Office referred appellant for a second opinion examination with Dr. Lee Beecher, Board-certified in psychiatry and neurology. In a June 2, 2004 report, Dr. Beecher diagnosed somatoform pain disorder, which he stated was supported by secondary gain of her compensation payments over many years. On July 27, 2004 he advised that it was unlikely appellant's condition would resolve and that the likelihood of returning to employment was low, even in a sedentary position. Dr. Beecher noted that appellant did not wish to be involved in psychiatric treatment or in a pain management program. In a September 9, 2004 report, he stated that appellant's psychogenic pain disorder was reinforced by the secondary gain of continuing compensation. Dr. Beecher noted that appellant was not interested in rehabilitation, a pain clinic or other forms of therapy which would assist her in returning to work. Dr. Beecher concluded that "[a]s stated previously, I do not feel that her current pain disorder is related, according to the reports I've reviewed, to the work-related issues of her injury."¹

By decision dated November 15, 2004, the Office found that appellant had no continuing disability or impairment causally related to the June 2000 employment injury. It found that Dr. Strand's referee opinion represented the weight of the medical evidence as to her orthopedic conditions. The Office also found that appellant's consequential psychological condition had resolved, relying on the referral opinion of Dr. Beecher.

On March 7, 2005 appellant, through her congressional representative, requested reconsideration. In an October 11, 2004 report, Dr. Joanne B. Rogin, Board-certified in psychiatry and neurology, stated that appellant continued to have ongoing neck and back pain with underlying multilevel degenerative changes in the cervical and lumbar spine, which she related to lifting in 1980. She recommended further evaluation and consideration of an epidural steroid for her cervical and lumbar changes.

By decision dated August 24, 2005, the Office denied modification of the November 15, 2004 decision.

¹ Dr. Beecher previously submitted extensive reports, dated June 2 and July 27, 2004, based on his examination of appellant, which documented the evolution of appellant's consequential psychological condition.

On October 28, 2005 appellant requested reconsideration. She submitted the March 7, April 18 and June 30, 2005 reports of Dr. Eric S. Salmon, an orthopedic surgeon, who stated findings on examination, noted decreased cervical range of motion and diagnosed C5-7 degenerative disc disease with neck pain; lumbar degenerative disc disease, and mid back pain, presumably due to degenerative change throughout the thoracic spine; and bilateral shoulder pain. Appellant also submitted May 18 and July 22, 2005 reports from Dr. Louis C. Saeger, Board-certified in orthopedic surgery, who noted that appellant received epidural injections for neck and arm pain on those dates.

By decision dated November 10, 2005, the Office denied modification of the November 15, 2004 decision.

On October 30, 2006 appellant requested reconsideration. In support of her claim, she submitted reports dated November 14, 2005 to October 24, 2006 from Dr. Glenn R. Buttermann, Board-certified in orthopedic surgery, who provided findings, noting the progression of appellant's neck and low back pain. Dr. Buttermann diagnosed axial pain at C5-6 and C6-7, stenosis at C5-6 and multiple degenerative disc disease with neck pain. In his October 24, 2006 report, he stated:

“Based upon the review of the history on [appellant], it is my opinion that the anterior cervical discectomy and fusion [ACDF] and decompression at C5-6 and C6-7, which we are now planning for, is related to a June 1980 injury.”

Appellant also submitted a December 23, 2005 report from Dr. Saeger, who reiterated his previous findings and conclusions.

By decision dated January 17, 2007, the Office denied modification of the November 15, 2004 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.²

Section 8123(a) provides that, 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.³

It is well established that, when 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.⁴

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Regina T. Pellecchia*, 53 ECAB 155 (2001).

⁴ *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

ANALYSIS -- ISSUE 1

In order to resolve the conflict in the medical evidence between appellant's treating physician, Dr. See, and Dr. O'Phelan, the second opinion physician, as to whether appellant remained disabled due to the accepted spinal strains, the Office referred the case to an impartial medical specialist, Dr. Strand. In his September 3, 2003 report, Dr. Strand provided findings on examination of appellant and reviewed the medical records. He opined that appellant was capable of returning to her job as a ward clerk and that her subjective complaints were unrelated to the accepted conditions arising from her June 1980 work injury. Dr. Strand stated in an April 20, 2004 report that appellant had no objective findings to support that she had residuals from her accepted low back, cervical and thoracic conditions based on his examination. He opined that appellant's degenerative arthritis had progressed in the 23 years since her work injury due to the normal aging process and would have developed in the same manner if the work incident had not occurred. Dr. Strand stated that there were no changes in MRI scans taken since the work injury, with no objective evidence of lumbar radiculitis or nerve root impingement. The Office relied on Dr. Strand's opinion in its November 15, 2004 decision, finding that appellant had no orthopedic residuals or continuing disability based on her June 1980 work injury. Therefore, her compensation was terminated.

The Board finds that Dr. Strand's referee opinion negated a causal relationship between appellant's condition and disability and constituted medical evidence sufficient to establish that appellant no longer had any residuals from her accepted June 1980 low back, cervical and thoracic strain injury. Dr. Strand's opinion is sufficiently probative, rationalized, and based upon a proper factual background. The Office properly accorded Dr. Strand's opinion the special weight of an impartial medical examiner.⁵

The Board also finds that Dr. Beecher's opinion provides a sufficient basis to terminate appellant's compensation for her accepted psychological condition. Dr. Beecher submitted thorough, extensive evaluations of appellant and her medical history. He concluded that she had no current pain disorder causally related to her accepted work condition. Dr. Beecher advised that appellant's psychogenic pain disorder was reinforced by the secondary gain of continuing compensation and that she was not interested in rehabilitation, a pain clinic or other forms of therapy which would assist her in returning to work. He advised that her somatoform pain disorder was not related to the accepted injury. The Office relied on Dr. Beecher's opinion in its November 15, 2004 termination decision, finding that appellant's psychological condition stemming from her 1980 work injury had resolved and that she had no continuing psychological disability for work resulting from the accepted employment injury.

The Board finds that Dr. Beecher's referral opinion negated a causal relationship between appellant's current psychological condition and her June 1980 employment injury. The weight of 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.⁶ Dr. Beecher's report is sufficiently probative, rationalized, based upon a proper

⁵ Gary R. Seiber, 46 ECAB 215 (1994).

⁶ See Anna C. Leanza, 48 ECAB 115 (1996).

factual background, and constitutes sufficient medical rationale to support the Office's November 15, 2004 decision terminating appellant's compensation. The Board will affirm the termination of appellant's compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits.⁷

ANALYSIS -- ISSUE 2

After the Office properly terminated appellant's compensation in its November 15, 2004 decision, the burden of proof shifted to appellant to establish continuing employment-related disability.⁸ Appellant submitted reports from Drs. Rogin, Salman, Saeger and Butterman, who reviewed findings on examination and related complaints of ongoing cervical and low back pain. The physicians generally indicated that appellant's current condition was causally related to the June 1980 work injury. However, these reports do not outweigh Dr. Strand's opinion nor do they negate the Office's finding that Dr. Strand's report represented the weight of the medical evidence. The reports from Rogin, Salman, Saeger and Butterman merely restated one side of the conflict which was resolved by Dr. Strand's referee medical opinion. Accordingly, the Board finds that Dr. Strand's opinion constituted the weight of medical opinion, supports the Office's November 15, 2004 decision to terminate appellant's compensation and deny any entitlement to continuing disability based on the June 1980 work injury.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits as of November 15, 2004 and appellant has not met her burden to establish continuing disability.

⁷ *Howard Y. Miyashiro*, 51 ECAB 253 (1999).

⁸ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

ORDER

IT IS HEREBY ORDERED THAT the January 17, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 26, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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