



left ankle with arthropathy.<sup>1</sup> It later accepted a head injury, cervical radiculitis and right upper extremity contusions sustained on July 23, 2004.<sup>2</sup> She received compensation for intermittent work absences in 2003 through November 2005.

Dr. Bruce E. Cohen, an attending Board-certified orthopedic surgeon, submitted reports in 2003 diagnosing severe post-traumatic osteoarthritis of the left ankle.<sup>3</sup> Dr. Robert B. Anderson, an attending Board-certified orthopedic surgeon, treated appellant from March 2003 onward. On August 16, 2004 he performed an open decompression and debridement of the left anterior ankle joint with hardware removal. Dr. Anderson submitted progress notes.

Appellant worked four hours a day limited duty through 2005 with restrictions provided by Dr. Anderson.<sup>4</sup> The Office obtained a second opinion on October 21, 2005 from Dr. Surendrapal Mac, a Board-certified orthopedic surgeon, who diagnosed degenerative post-traumatic arthritis of the left ankle with a clonus deformity. Dr. Mac opined that appellant was able to work eight hours a day with restrictions.

On January 9 and 20, 2006 appellant filed a claim for total wage-loss compensation for the period December 24, 2005 to January 20, 2006. The Office accepted a period of total disability beginning January 10, 2006.

In a January 10, 2006 form report, Dr. A. Randall Moss, an attending Board-certified family practitioner, noted treating appellant on December 19 and 26, 2005 and January 2, 2006 for headaches related to the accepted July 23, 2004 head injury. He referred appellant to Dr. Robert Ringel, a neurologist.

In a January 10, 2006 report, Dr. Anderson diagnosed significant post-traumatic arthritis of the left ankle with chronic pain worsened by activity. He restricted appellant to working four hours a day.

In a February 17, 2006 letter, the Office found a conflict of medical opinion between Dr. Anderson, for appellant, and Dr. Mac, for the government, regarding the nature and extent of

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<sup>1</sup> The Office initially denied the claim for left ankle osteoarthritis by decision dated July 24, 2003. It accepted the claim following additional medical development.

<sup>2</sup> The left ankle claim was assigned File No. 06-2084338. The head injury and right arm claim was assigned File No. 06-2119413. The Office in an April 10, 2007 letter, found that appellant submitted sufficient medical evidence to establish a total disability for work from December 26 to 29, 2006. It paid the remaining four hours of compensation each day for that period. There is no clear indication that the Office formally doubled the two claims.

<sup>3</sup> The Office obtained a second opinion on January 13, 2004 from Dr. Eugene N. Powell, Jr., a Board-certified orthopedic surgeon, who opined that walking and standing at work caused a temporary aggravation of appellant's preexisting left ankle osteoarthritis due to a November 1989 ankle fracture with open reduction and internal fixation.

<sup>4</sup> Appellant claimed a schedule award on March 1, 2005. There is no final decision of record regarding the schedule award claim.

her injury-related conditions. It planned to appoint an impartial medical examination to resolve the conflict. There is no impartial medical report of record.<sup>5</sup>

By decision dated May 15, 2006, the Office denied appellant's claim for wage-loss compensation for the period December 24, 2005 to January 20, 2006. It found that appellant submitted insufficient rationalized medical evidence to establish disability for the claimed period.

In a June 2, 2006 letter, appellant requested reconsideration. She submitted a March 7, 2006 report from Dr. Moss, who noted examining appellant on December 19 and 26, 2005 and January 2, 2006 for head pain related to the July 23, 2004 injuries. Dr. Moss referred appellant to Dr. Ringel.

By decision dated July 19, 2006, the Office modified the May 15, 2006 decision to accept that appellant was disabled from January 10 to 20, 2006. It found that appellant submitted insufficient medical evidence to establish the claimed disability for work from December 24, 2005 to January 9, 2006.

In a July 25, 2006 letter, appellant requested reconsideration. She submitted a July 11, 2006 report from Dr. Ringel diagnosing cervical myofascial pain and noting work restrictions. In a July 20, 2006 report and chart note, Dr. Anderson stated that appellant was able to perform light duty as of January 10, 2006 for four hours a day. Appellant also submitted a September 30, 2004 magnetic resonance imaging scan of her right shoulder showing rotator cuff edema, tendinosis and a possible tear.

By decision dated August 31, 2006, the Office denied modification of the prior decision on the grounds that the medical evidence submitted did not address the claimed period of disability.

In a September 11, 2006 letter, appellant requested reconsideration. She contended that the Office had already paid her 40 hours of wage-loss compensation for the period December 24, 2005 to January 6, 2006 as she was working only four hours a day due to accepted head and neck injuries.

By decision dated October 4, 2006, the Office denied modification on the grounds that the medical record did not demonstrate objective findings of disability during the disputed period.

In an October 27, 2006 letter, appellant requested reconsideration. She submitted work restrictions from Dr. Anderson relevant to October 2006. Appellant also submitted an

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<sup>5</sup> The Office conducted second opinion referrals in March 2006 to Dr. Bogdan Gheorghiu, a Board-certified neurologist, and Dr. James Bethea, a Board-certified orthopedic surgeon. Dr. Gheorghiu diagnosed cervical radiculopathy attributable to the July 23, 2004 injuries. Dr. Bethea diagnosed right shoulder pain and left ankle osteoarthritis. On July 24, 2006 the Office appointed Dr. Wesley A. Carr, Jr., a Board-certified neurologist, as impartial medical examiner, who declined to perform the examination. On November 30, 2006 the Office appointed Dr. John Robert Absher, a Board-certified neurologist, as impartial medical examiner. There is no report from Dr. Absher of record.

October 27, 2006 report from Dr. Moss, who noted treating her for headaches with cervical radiculopathy due to the accepted July 23, 2004 head, neck and arm injuries. Dr. Moss stated that “[s]pecifically she was NOT to work from December 24, 2005 until seen by Dr. Ringel on January 23, 2006.” (Emphasis in the original.)

By decision dated January 11, 2007, the Office denied modification on the grounds of insufficient medical evidence. It found that Dr. Moss provided no findings or rationale explaining why appellant was totally disabled for work during the claimed period.

In a February 20, 2007 letter, appellant requested reconsideration. She submitted additional medical evidence.

In December 22, 2006 slips and a February 6, 2007 report, Dr. Anderson held appellant off work on December 5 and December 26 to 29, 2006 due to an exacerbation of left ankle pain attributable to walking and standing at work.<sup>6</sup>

In a February 20, 2007 form report, Dr. Moss noted treating appellant on December 19 and 26, 2005 and January 2, 2006 for sequelae of the July 23, 2004 head injury. In a February 26, 2007 report, he stated that appellant was under his care for injury-related cervicogenic headaches and radiculopathy from December 24, 2005 to January 20, 2006. Dr. Moss noted that appellant received compensation from January 10 to 20, 2006 for the same diagnoses. He emphasized that he held appellant off work from December 24, 2005 through January 20, 2006 pending an appointment with Dr. Ringel.

By decision dated July 5, 2007, the Office denied modification on the grounds that the medical evidence did not establish the claimed disability for work from December 24, 2005 to January 9, 2006. It found that Dr. Moss did not provide medical rationale as to why the accepted injuries would continue to disable appellant for work during the disputed period.

In an August 10, 2007 letter, appellant requested reconsideration. She noted that the Office paid compensation from January 10 to 22, 2006 based on Dr. Moss holding her off work pending the appointment with Dr. Ringel. Appellant contended that the Office did not explain why it would not compensate her for the period December 24, 2005 to January 9, 2006 based on the same medical evidence. She submitted a July 30, 2007 letter from Dr. Moss agreeing with appellant’s contentions, noting that she was “sincere and accurate in her assessment.” Dr. Moss requested that the Office reconsider its denial of compensation for the disputed period.

By decision dated October 22, 2007, the Office denied modification on the grounds that the medical evidence was insufficient to warrant modification. It found that Dr. Moss’ praise of appellant’s character was not medical rationale sufficient to establish her claim. The Office noted reviewing medical evidence submitted right shoulder and head injury claim<sup>7</sup> and that the

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<sup>6</sup> In an April 10, 2007 letter, the Office found that appellant submitted sufficient medical evidence to establish a total disability for work from December 26 to 29, 2006. It paid the remaining four hours of compensation each day for that period.

<sup>7</sup> File No. 06-2119413.

decision pertained to both claims. It found that a January 2, 2006 treatment note submitted under the head injury claim did not indicate any period of total disability.

### **LEGAL PRECEDENT**

An employee seeking compensation under the Federal Employees' Compensation Act<sup>8</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.<sup>9</sup>

To establish a causal relationship between a claimed period of disability claimed and the accepted employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.<sup>10</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>11</sup> 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 medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>12</sup>

### **ANALYSIS**

The Office accepted that appellant sustained an aggravation of left ankle osteoarthritis, a head injury, right upper extremity contusions and cervical radiculitis in the performance of duty. On January 9 and 20, 2006 appellant claimed wage-loss compensation for the period December 24, 2005 to January 20, 2006. By decision dated May 15, 2006, the Office denied compensation for the claimed period of disability on the grounds that appellant submitted insufficient medical evidence establishing total disability for work for that period. It then accepted a period of total disability beginning January 10, 2006. In six subsequent merit decisions dated from July 19, 2006 to October 22, 2007, the Office denied appellant's claim for compensation from December 24, 2005 to January 9, 2006 on the grounds she submitted insufficient rationalized medical evidence to establish total disability for this period.

Appellant submitted reports from Dr. Anderson, an attending Board-certified orthopedic surgeon. In January 10 and July 20, 2006 reports, Dr. Anderson diagnosed post-traumatic arthritis of the left ankle and noted work restrictions. He also addressed appellant's condition in periods not relevant to the period in dispute. As Dr. Anderson did not find appellant totally

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<sup>8</sup> 5 U.S.C. §§ 8101-8193.

<sup>9</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>10</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>11</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>12</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

disabled for work for any period from December 24, 2005 to January 9, 2006, his reports are of little probative value in establishing the claimed period of total disability.

Dr. Moss, an attending Board-certified family practitioner, treated appellant on December 19 and 26, 2005 and January 2, 2006 for headaches related to the accepted July 23, 2004 head injury. He referred appellant to Dr. Ringel, a neurologist. Dr. Moss noted in an October 27, 2006 report that he held appellant off work from December 24, 2005 through January 20, 2006 pending the appointment with Dr. Ringel. He contended that because the Office accepted a period of disability from January 10 to 20, 2006, it should compensate appellant from December 24, 2005 to January 9, 2006 as he also held her off work for that period. However, Dr. Moss did not provide objective findings or medical rationale explaining how and why the accepted injuries disabled appellant for work for the claimed period. This lack of rationale greatly diminishes the probative value of his reports.<sup>13</sup>

Appellant also submitted a September 30, 2004 imaging report and a July 11, 2006 report from Dr. Ringel. Neither report addressed the claimed period of disability.

The Board therefore finds that appellant submitted insufficient rationalized medical evidence to establish that she was totally disabled for work from December 24, 2005 to January 9, 2006 due to the accepted injuries. However, the Board further finds that there are two administrative matters in the case that require additional development.

First, the Office predicated its October 22, 2007 decision, in part, on evidence not before the Board on the current appeal. It noted reviewing evidence under File No. 06-2119413, regarding a head and shoulder injury, as well as File No. 06-02084338 now before the Board. The Office found that a report in File No. 06-2119413 did not establish the claimed period of total disability. However, this report is not of record in the case file now before the Board under File No. 06-2084338. In order to perform a fully informed adjudication of the issues, the Board must be able to review the complete evidentiary basis for the Office's October 22, 2007 decision. Therefore, the case must be remanded to the Office for reconstruction of the record, including doubling the case record from File No. 06-02084338 with File No. 06-2119413.

Second, the Board finds that there is an unresolved conflict of medical opinion in the case. The Office found a conflict of medical opinion as of October 21, 2005 between Dr. Anderson, for appellant, and Dr. Mac, a second opinion physician for the government, regarding the nature and duration of her injury-related conditions. However, there is no impartial medical report of record. On return of the case, the Office shall obtain an appropriate impartial medical opinion to resolve the conflict of opinion pursuant to section 8123(a) of the Act.<sup>14</sup> Following this and any other development deemed necessary, the Office shall issue an appropriate decision in the case.

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<sup>13</sup> See *Frank D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports lacking rationale on causal relationship are entitled to little probative value).

<sup>14</sup> 5 U.S.C. § 8123(a).

**CONCLUSION**

The Board finds that the case is not in posture for a decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 22 and July 5, 2007 are set aside and the case remanded for further development consistent with this decision.

Issued: September 24, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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