

examination. He diagnosed right sacroiliac strain and advised that it was unknown if appellant's condition was employment related. Mr. Kolar referred appellant to his associate, Dr. Scott K. Ross, Board-certified in occupational medicine, and provided restrictions to her physical activity. In a January 2, 2008 report, Dr. Curtis Lee, Board-certified in emergency medicine, advised that appellant should be off work on January 2 and 3, 2008. In a January 4, 2008 report, he advised that she would need to be off work as long as she required muscle relaxers and pain medication.

Appellant submitted CA-7 claims for compensation for the period December 17 through January 4, 2008. On January 11, 2008 the Office accepted that she sustained closed dislocations of the sacrum and lumbar vertebra.

By letter dated February 21, 2008, the Office of the Inspector General of the employing establishment forwarded a medical report dated January 24, 2008 with an accompanying surveillance DVD.¹ The January 24, 2008 report of Dr. Ross and Mr. Kolar reviewed the records of Dr. Pickens dated October 29 to December 18, 2007, Mr. Kolar's December 28, 2007 reports, Dr. Lee's emergency room evaluation of January 2, 2008, and physical therapy notes dated January 3, 7 and 9, 2008. On January 2, 2008 Mr. Kolar reported that appellant presented to the office that day, stating that she had a fall at home. Appellant was counseled to follow through at the emergency room. Dr. Ross noted that appellant was originally scheduled to see him on January 11, 2008 for an occupational medicine consultation. He advised that appellant abruptly left the office before his interview or examination. However, Dr. Ross observed her ambulating in the corridor without any antalgic gait, limp or list.

Dr. Ross was provided a video surveillance DVD, which he and Mr. Kolar reviewed. He stated that appellant was clearly and easily visible in the DVD, noting that it included video surveillance on December 19, 20, 21, 27, 28 and 29, 2007 and January 8, 2008. Dr. Ross provided comments for each day reviewed and advised that the video clearly demonstrated that appellant was physically capable of performing a variety of tasks and activities of daily living without any apparent limitation or restriction. Appellant was observed standing, walking, jogging up stairs, descending stairs, lifting/carrying a variety of items, lifting/carrying a small child, fully bending forward at the waist while standing, driving, and entering/exiting a white Ford Sport-Trac 4-door pickup truck. Throughout these observed activities, she exhibited no antalgic gait, limp, or list, did not utilize any ambulatory assists, and was not wearing any visible braces. Dr. Ross advised that appellant performed all tasks easily, briskly, and without any apparent difficulty or limitation, noting that, on several occasions, she was observed jogging briskly up the stairway to her apartment, about 12 to 14 steps. He stated that, on January 8, 2008, she was observed for about 30 minutes, repeatedly lifting/carrying her child, pushing her child in a stroller, bending forward repeatedly to adjust the child's clothing and speak to the child and continuously standing or walking. Appellant performed all of these activities without difficulty, limitation or assistance. Dr. Ross advised that the observed physical activities/tasks with appellant's verbal reports of debilitating back pain were inconsistent with her reported medical history. The DVD suggested that her reports of back pain and disability had been deceptive and misleading. Based on Dr. Ross' review of the DVD, appellant had no physical limitations or restrictions attributable to the October 30, 2007 work incident. Dr. Ross concluded

¹ The record indicates that the DVD is maintained by the iFECS site manager.

that the DVD clearly illustrated that she could perform a variety of physical tasks, without any limitation or restriction.

On March 19, 2008 the Office proposed to terminate appellant's compensation benefits on the grounds that the medical evidence established that she no longer had disability or residuals of the accepted conditions. By decision dated March 20, 2008, it denied appellant's claim for wage-loss compensation for the period December 16 to 21, 2007 on the grounds that the medical evidence did not support that she was disabled from work.²

In a letter dated March 20, 2008, appellant requested a change of physicians. By letter dated March 25, 2008, the Office informed appellant that her request would not be resolved until the proposed termination action was completed.

In a decision dated April 21, 2008, the Office finalized the proposed termination.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

ANALYSIS

The Board finds that the Office met its burden of proof to terminate appellant's compensation on April 21, 2008. In a January 24, 2008 report, Dr. Ross and Mr. Kolar advised that the physical activities and tasks observed on the surveillance DVD were inconsistent with appellant's verbal reports of debilitating back pain and with her reported medical history. The DVD suggested that her reports of back pain and disability had been deceptive and misleading. Based on review of the DVD, Dr. Ross advised that appellant had no physical limitations or restrictions attributable to the October 30, 2007 work incident and illustrated that she could perform a variety of physical tasks, without any limitation or restriction. Appellant was scheduled for a physical examination with Dr. Ross but abruptly left his office before he could examine her. She submitted no argument or evidence in response to the proposed termination, merely requesting a change of physicians. At no time did she address the accuracy of the DVD.⁵

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and

² Appellant did not file an appeal of the March 20, 2008 decision with the Board.

³ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁴ *Id.*

⁵ *See J.M.*, 58 ECAB __ (Docket No. 06-661, issued April 25, 2007).

medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report,⁶ and contemporaneous evidence is entitled to greater probative value than later evidence.⁷ The Board finds that the weight of the medical evidence rests with the January 24, 2008 report from Dr. Ross who advised that appellant had no physical limitations or restrictions attributable to the October 30, 2007 work incident. Thus, the Office properly found that appellant had no disability or residuals due to the accepted injury and terminated her compensation benefits on April 21, 2008.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation on April 21, 2008.

ORDER

IT IS HEREBY ORDERED THAT the April 21, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 10, 2009
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

⁶ *Michael S. Mina*, 57 ECAB 379 (2006).

⁷ *S.S.*, 59 ECAB __ (Docket No. 07-579, issued January 14, 2008).