



right ankle and foot. Appellant stopped work on August 28, 2006. The Office accepted his claim for right ankle sprain. Compensation payments commenced on November 25, 2006.

Appellant submitted treatment notes from Dr. Andrew Siekanowicz, a Board-certified orthopedic surgeon, dated September 5 through December 21, 2006. In treatment notes dated September 5 and November 28, 2006, Dr. Siekanowicz noted appellant's complaint of right ankle pain and swelling after the August 23, 2006 work injury. He also noted appellant's previous low back injury and his history of low back pain and lumbar radiculitis with acute lumbar strain and spasm secondary to gait alteration and adjustments due to crutch ambulation. Dr. Siekanowicz concluded the right ankle symptoms were consistent with and directly attributable to the August 23, 2006 work injury. He stated that appellant's low back pain was 80 percent directly attributable to the August 23, 2006 work injury and 20 percent residual from his prior low back injury. Dr. Siekanowicz also stated that appellant was disabled. On September 14, 2006 he indicated that appellant remained disabled. On October 26, 2006 Dr. Siekanowicz concluded that appellant's right ankle range of motion had improved with mild chronic swelling with no deformity.

In an August 28, 2006 treatment note, Dr. Mehru Master, a Board-certified internist, noted that appellant sprained his ankle after falling five days prior. She diagnosed severe low back stiffness and right ankle sprain. Dr. Master advised that appellant not work for two weeks.

In a December 15, 2006 letter, he asked the Office to accept his lumbar condition. On December 21, 2006 Dr. Siekanowicz indicated that the right ankle pain was localizing to the plantar fascia, metatarsal heads and anteromedial tubercle of the calcaneus due to the right ankle injury, which had altered appellant's gait and caused difficulty with plantar fasciitis and metatarsalgia along with continual radicular pain from the lumbar spine.

On January 3, 2007 the Office referred appellant and a statement of accepted facts to Dr. Sankara Rao Kothakara, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a January 25, 2007 report, Dr. Kothakara summarized appellant's medical history and the history of the August 23, 2006 work injury. He reviewed prior x-rays of appellant's right ankle and compared them with repeated x-rays taken at the examination. Dr. Kothakara diagnosed an avulsion fracture at the tip of the medial malleolus of the right ankle, which had healed. He indicated that the right ankle sprain had resolved and there was questionable aggravation of lumbar disc pathology. Dr. Kothakara noted essentially no tenderness on lumbar spine examination with straight leg raising to 90 degrees bilaterally. He concluded that appellant's right ankle had sufficiently improved for him to return to work. The lumbar spine problem remained unresolved. Dr. Kothakara recommended a magnetic resonance imaging (MRI) scan of appellant's lumbar spine. On February 1, 2007 he reviewed a January 29, 2007 MRI scan of appellant's lumbar spine and compared it with a lumbar spine MRI scan performed prior to the August 23, 2006 incident. Dr. Kothakara noted a small disc herniation at L4-5 that did not significantly change after appellant's August 23, 2006 work incident. He concluded that appellant's ankle had improved with full range of motion. Dr. Kothakara also concluded that appellant could return to his preinjury job as his back injury was not aggravated by the August 23, 2006 work incident.

In a decision dated February 23, 2007, the Office advised appellant that his claim was accepted for fracture of the medial malleolus of the right ankle.

On February 26, 2007 the Office issued appellant a notice of proposed termination of compensation, indicating that the weight of the medical evidence demonstrated that appellant's work-related condition had resolved and he no longer had any disability or residuals from the accepted ankle condition.

In a March 28, 2007 letter, appellant's attorney disagreed with the proposed termination. He questioned the evaluation by Dr. Kothakara and asserted that the opinions of Drs. Kothakara and Siekanowicz conflicted.

Appellant submitted treatment notes from Dr. Siekanowicz dated January 30 through July 20, 2007. On March 2, 2007 Dr. Siekanowicz noted that the right foot and ankle had minimal pain, but stated that appellant still ambulated with a limp due to discomfort of metatarsal heads and anteromedial tubercle of the calcaneus. He concluded that it was beyond reasonable medical certainty that appellant's back pain was directly attributable and consistent with the August 23, 2006 incident. Appellant's ankle and foot injury were significantly exacerbated and increased the symptoms such that his back required at least evaluation for epidural injections. On March 23, 2007 Dr. Siekanowicz noted appellant's right foot and ankle had decreased pain with a continued limp, which exacerbated his low back pain. On April 17, 2007 he indicated that appellant's low back had been aggravated by the right ankle injury, which caused significant gait alteration and altered the biomechanics about the lumbar spine. Right ankle examination demonstrated decreased pain and tenderness with mild chronic swelling with mild tenderness at extremes of motion. Dr. Siekanowicz continued submitting reports noting appellant's status and continuing disability.

In a letter dated May 7, 2007, the Office notified appellant that there was a conflict in the medical evidence between Dr. Kothakara, who opined that appellant's right ankle condition had resolved and that the ankle condition did not aggravate his preexisting back condition, and Dr. Siekanowicz, who opined that appellant's right ankle condition and back pain was directly attributable to the August 23, 2006 incident. On May 29, 2007 the Office referred appellant and a statement of accepted facts to Dr. Patrick Noel, a Board-certified orthopedic surgeon, to resolve the conflict in the medical evidence.

In a June 11, 2007 report, Dr. Noel provided a history of appellant's August 23, 2006 work incident and medical treatment. He noted that at the time of appellant's work incident he had been undergoing treatment for preexisting conditions including herniated lumbar disc. Dr. Noel indicated that on August 24, 2006 appellant was diagnosed with right ankle sprain and was put on crutches. He reviewed the medical evidence including reports from Dr. Siekanowicz and from Dr. Kothakara's second opinion evaluation. Dr. Noel stated that a March 1, 2006 lumbar spine MRI scan showed a central disc herniation at L4-5 and that a disc prolapse at that level was diagnosed prior to the August 23, 2006 work injury. He noted appellant's complaint of right foot pain on weight bearing but no specific right ankle complaints. Appellant also complained of left hand, arm and hip numbness and tingling as well as back pain. Examination revealed appellant's right ankle had full range of motion, no tenderness and no swelling. Dr. Noel concluded that appellant's right ankle injury sustained on August 23, 2006 had

completely resolved with no permanent disability or residuals. He also reviewed Dr. Siekanowicz's reports noting degenerative disc disease of appellant's lumbar spine and diagnosing right lumbar radiculitis. Dr. Noel concluded that appellant's low back pain was related to a herniated lumbar disc that preexisted the August 23, 2006 work injury but was not significantly altered by the work incident. He further concluded that appellant already had substantial back problems prior to the August 23, 2006 incident. Dr. Noel advised that the medical findings indicated appellant's current disability was not related to the August 23, 2006 ankle injury and no further treatment for the right ankle was needed. He also noted that appellant's ankle allowed him to return to work but his unrelated herniated lumbar disc could cause limitations.

In an August 21, 2007 decision, the Office terminated appellant's compensation benefits effective that day.

On September 12, 2007 appellant requested an oral hearing, which was held on February 26, 2008. He submitted treatment notes from Dr. Siekanowicz dated August 31, 2007 through February 26, 2008. Dr. Siekanowicz noted that appellant's right ankle was stable but that there was decreased functionable ability in reference to strength, endurance and proprioception. He also noted that appellant injured his right foot and back when he fell on August 23, 2006. Dr. Siekanowicz indicated that appellant's preexisting back condition was exacerbated due to the fall and subsequent use of crutches. On November 27, 2007 he released appellant to light duty as of December 3, 2007. In a February 19, 2008 report, Dr. Master opined that appellant injured his right ankle and back due to a fall on August 28, 2006.

In a June 26, 2008 decision, an Office hearing representative affirmed the Office's termination decision finding that the weight of the evidence was properly given to Dr. Noel and that appellant did not provide sufficient evidence to refute the weight of the evidence. The hearing representative also found that the evidence did not establish that the employment injury caused any injury to appellant's back.

### **LEGAL PRECEDENT -- ISSUE 1**

If a member weakened by an employment injury contributes to a later or other injury, the subsequent injury will be compensable as a consequential injury, if the further medical complication flows from the compensable injury, so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable in the circumstances.<sup>1</sup>

Where appellant claims that a condition not accepted or approved by the Office was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>2</sup> Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion

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<sup>1</sup> S.M., 58 ECAB \_\_\_ (Docket No. 06-536, issued November 24, 2006).

<sup>2</sup> Jaja K. Asaramo, 55 ECAB 200 (2004).

evidence.<sup>3</sup> To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship. 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.<sup>4</sup> Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions is sufficient to establish causal relationship.<sup>5</sup>

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. The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted appellant's claim for right ankle sprain and fracture of the medial malleolus. However, it did not accept his claim for a lumbar condition. Appellant asked that the Office accepted his back condition and he submitted reports from his physician, Dr. Siekanowicz, who indicated that the work injury aggravated appellant's back condition. The Office properly determined that a conflict existed in the medical evidence as to whether appellant had a lumbar condition causally related to the August 23, 2006 incident. On one side, Dr. Siekanowicz, for appellant, opined that appellant's back condition directly attributed to the August 23, 2006 work injury. On the other side, the second opinion physician, Dr. Kothakara, opined that appellant's back condition was preexisting and was not causally related or aggravated by the August 23, 2006 incident.

The Office properly referred appellant to Dr. Noel for an impartial medical examination to resolve the conflict in medical opinion between Drs. Siekanowicz and Kothakara. In order to determine whether appellant's lumbar condition was causally related to the August 23, 2006 incident, Dr. Noel reviewed the entire record, performed his own examination of appellant and

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<sup>3</sup> *M.D.*, 59 ECAB \_\_\_\_ (Docket No. 07-908, issued November 19, 2007).

<sup>4</sup> *Jennifer Atkerson*, 55 ECAB 317 (2004).

<sup>5</sup> *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>6</sup> *R.H.*, 59 ECAB \_\_\_\_ (Docket No. 07-2124, issued March 7, 2008); *see also* 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321.

provided detailed findings in a June 11, 2007 report. He noted that appellant had preexisting herniated lumbar disc with lumbar radiculopathy. Dr. Noel reviewed medical evidence in the record and noted that this evidence documented that appellant had a central disc herniation at L4-5 and a disc prolapse at that level was diagnosed and ongoing prior to the August 23, 2006 work injury. He also noted that the condition was not aggravated by the August 23, 2006 incident as evidenced by appellant's low back complaints that had not been significantly altered by the injury sustained on August 23, 2006. Dr. Noel advised that there were no medical findings to indicate that the current disability or condition was related to the August 23, 2006 ankle injury.

The Board finds that the Office properly relied on Dr. Noel's report in determining that appellant did not have a lumbar condition causally related to the accepted ankle injury. Dr. Noel provided a well-reasoned opinion based on a complete and accurate history of appellant's medical and factual background. Moreover, he reviewed the medical evidence of record and performed his own examination of appellant. Therefore, the Office properly accorded special weight to the impartial medical specialist's findings.<sup>7</sup>

Appellant did not submit sufficient medical evidence to overcome the weight of Dr. Noel's opinion or to create a new conflict. He submitted treatment notes from Dr. Siekanowicz reiterating that appellant's preexisting back condition was exacerbated by the August 23, 2006 incident. Dr. Siekanowicz did not provide any new rationale to support his opinion on causal relationship. The Board notes that reports from a physician who was on one side of a medical conflict that an impartial specialist resolved, are generally insufficient to overcome the weight accorded to the report of the impartial medical examiner, or to create a new conflict.<sup>8</sup> Other treatment notes submitted by appellant did not explain how his lumbar condition was aggravated or caused by the accepted right ankle injury. For example, in his February 19, 2008 report, Dr. Master opined that appellant injured his right ankle and back due to a fall but he did not provide any medical reasoning explaining why the fall at work would have caused a new back injury or aggravated appellant's preexisting condition. Therefore, this evidence is insufficient to establish that the August 23, 2006 work injury also caused or aggravated a back condition.

Consequently, appellant did not meet his burden of proof in establishing that his lumbar condition was causally related to the accepted ankle injury.

### **LEGAL PRECEDENT -- ISSUE 2**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>9</sup> After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without

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<sup>7</sup> See *Y.A.*, 59 ECAB \_\_\_\_ (Docket No. 08-254, issued September 9, 2008) (when a case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical opinion, the opinion of such specialist, if sufficiently well rationalized and based on a proper background, must be given special weight).

<sup>8</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); see also *Dorothy Sidwell*, 41 ECAB 857 (1990).

<sup>9</sup> *Id.*; *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

establishing that the disability has ceased or that it is no longer related to the employment.<sup>10</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>11</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that the claimant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>12</sup>

### **ANALYSIS -- ISSUE 2**

The Office accepted that appellant's August 23, 2006 work incident caused a right ankle sprain and fracture of the medial malleolus. It paid appellant appropriate compensation before terminating his compensation benefits effective August 21, 2007. The Board finds that the Office has met its burden to establish that all residuals of appellant's accepted employment condition had resolved effective August 21, 2007.

The Office properly determined that a conflict existed in the medical evidence as to whether appellant had any disability or residuals due to his accepted right ankle condition. Appellant's treating physician, Dr. Siekanowicz, submitted reports indicating that appellant had continuing right ankle residuals due to the August 23, 2006 injury. He noted mild chronic swelling and persistent tenderness of appellant's right ankle. Dr. Siekanowicz also noted that appellant ambulated with a limp. He advised that appellant was disabled. On the other hand, the second opinion physician, Dr. Kothakara, opined that the accepted right ankle condition had resolved such that appellant could return to work without further treatment.

The Office properly referred appellant to Dr. Noel for an impartial medical examination to resolve the conflict in medical opinion between Drs. Siekanowicz and Kothakara as to whether appellant had any disability or residuals due to the accepted ankle condition. In a June 11, 2007 report, Dr. Noel provided rationale for his opinion that appellant ceased to have any residuals from his August 23, 2006 employment injury. His review of the medical record as well as his own examination revealed that appellant had no specific right ankle complaints and that the right ankle had full range of motion, no tenderness and no swelling. Sensation and circulation were also found to be normal on examination. Based on these findings, Dr. Noel concluded that appellant's right ankle condition had completely resolved with no disability or residuals allowing appellant to return to preinjury work. His opinion was based on proper factual and medical history as he had a statement of accepted facts and his report accurately summarized the relevant medical evidence. Furthermore, Dr. Noel analyzed the case record and his own findings on examination to support his conclusion regarding appellant's ankle condition.<sup>13</sup> He

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<sup>10</sup> *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>11</sup> *T.P.*, 58 ECAB \_\_\_\_ (Docket No. 07-60, issued May 10, 2007); *Larry Warner*, 43 ECAB 1027 (1992).

<sup>12</sup> *E.J.*, 59 ECAB \_\_\_\_ (Docket No. 08-1350, issued September 8, 2008).

<sup>13</sup> *See Naomi Lilly*, 10 ECAB 560 (1959) (the opportunity for and thoroughness of examination, the accuracy and completeness of the doctor's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the doctor's opinion are factors which enter into the weight of an evaluation).

also addressed, in detail, whether appellant's disability and residuals of his right ankle condition had ceased. The Board finds that Dr. Noel's opinion is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight<sup>14</sup> and establishes that residuals of appellant's accepted right ankle and foot injury have resolved without residual.

Appellant did not submit sufficient medical evidence to overcome the weight of Dr. Noel's opinion. Reports from Dr. Siekanowicz, who was on one side of the conflict that Dr. Noel resolved,<sup>15</sup> provide no new rationale in support of continuing causal relationship for appellant's right foot condition and are insufficient to create a new conflict or overcome Dr. Noel's report. Likewise, Dr. Master did not offer any medical rationale to support that appellant had an ongoing work-related right ankle condition.<sup>16</sup>

Consequently, the weight of the medical evidence rests with Dr. Noel and establishes that appellant had no continued disability or residuals due to his accepted right ankle condition, and therefore, the Office met its burden of proof to terminate appellant's compensation benefits.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof in establishing that his lumbar condition was causally related to the accepted ankle injury. The Board further finds that the Office met its burden of proof to terminate appellant's compensation benefits for his right ankle condition effective August 21, 2007.

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<sup>14</sup> See *supra* note 7.

<sup>15</sup> See *supra* note 8.

<sup>16</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated June 26, 2008 is affirmed.

Issued: April 15, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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