

She stopped work on December 17, 2002. The Office accepted the claim for contusion of the left elbow, left sprain/strain of the left wrist, contusion of the left knee and tear of the medial meniscus of the left knee.

Appellant returned to work on January 31, 2003 but stopped on February 24, 2003. She underwent left knee arthroscopy with partial medial meniscectomy, chondroplasty of the patella and total synovectomy on April 28, 2003; and arthroscopy with lateral release, chondroplasty of the medial femoral condyle and patella and total synovectomy on September 15, 2003. Appellant received compensation benefits.

In a June 4, 2004 report, Dr. Bill E. Weldon, an osteopath and treating physician, advised that appellant had not recovered from her injuries and had severe disabling pain and left knee rigidity. Appellant had swelling, popping, crepitance and a decreased range of motion in the left knee. Dr. Weldon stated that appellant used a cane and advised that it was unsafe for her to return to full-time light duty as it would put her at risk for further injury. He found that she remained totally disabled for at least six months.

In a June 30, 2005 report, Dr. Charles E. Graham, a Board-certified orthopedic surgeon and an Office referral physician, opined that appellant had residuals of left knee contracture, due to a failure to rehabilitate, and left lateral epicondylitis that should resolve with exercise. He advised that appellant could return to work as a case manager with restrictions on lifting more than 10 pounds and being allowed to sit and stand as needed.

In a July 19, 2005 report, Dr. Weldon reiterated that appellant had not recovered from her work injuries. He noted severe disabling pain and rigidity in her left knee, shoulder and elbow and in the lumbar spine. Appellant had very limited range of motion with weakness, paresthesias, swelling and crepitance in her left leg. Dr. Weldon opined that she remained disabled due to her work-related injuries. The Office found a conflict in medical opinion between Dr. Weldon and Dr. Graham as to appellant's capacity to return to work.

On September 8, 2005 the Office referred appellant to Dr. John A. Sklar, a Board-certified physiatrist, for an impartial medical evaluation. In an October 14, 2005 report, Dr. Sklar reviewed her history of injury and treatment and opined that there was no reason that she could not return to work. He indicated that her work-related conditions had resolved and opined that her left knee degenerative disease was not work related. Dr. Sklar noted that appellant had work restrictions but advised that these restrictions were not due to her work-related injuries. He also noted that appellant underwent a functional capacity evaluation on the day he examined her but explained her results were "invalid because she gave less than maximal effort." Dr. Sklar opined that appellant could return to work in her sedentary position as a case manager.

By decision dated December 16, 2005, the Office terminated appellant's entitlement to compensation benefits effective December 24, 2005. It found that the weight of the medical evidence demonstrated that there were no work-related residuals or disability.

Appellant requested a hearing. In a January 10, 2006 report, Dr. Weldon diagnosed left ulnar nerve entrapment, left knee internal derangement and lumbar strain/sprain. He advised that

she had not recuperated from her injuries and continued to have severe disabling pain and rigidity in her left knee, shoulder and elbow. Appellant opined that appellant could not return to any type of employment.

On April 10, 2006 an Office hearing representative vacated the Office's December 16, 2005 decision and remanded the case to the Office with instructions for the Office to amend the statement of accepted facts and request clarifying information from Dr. Sklar regarding whether residuals of appellant's work injury had resolved.

On June 14, 2006 the Office requested that Dr. Sklar provide a clarifying opinion. On July 13, 2006 Dr. Sklar noted that he was aware of appellant's duties and advised that she could return to work in her sedentary job as a case manager. However, he indicated that she was not able to perform any physical maneuvers associated with law enforcement officer duties, such as subduing an inmate. Dr. Sklar advised that there were other factors that were not work related, such as degenerative disease of the left knee, which predated the date of injury, fibromyalgia and obesity. He noted that appellant's obesity was a significant cause of the stress on her knees and was most likely the source of her degenerative disease in the knees. Dr. Sklar opined that she did not have residuals of her December 16, 2002 employment injury. On July 21, 2006 the Office proposed to terminate compensation benefits based on Dr. Sklar's report.

By decision dated August 29, 2006, the Office finalized its proposed notice and terminated appellant's entitlement to medical and wage-loss compensation benefits.

On September 11, 2006 appellant requested a hearing and submitted an August 1, 2006 report from Dr. Weldon, who noted diagnoses and indicated that she continued to have severe disabling pain and rigidity in her left knee, shoulder, elbow and lumbar spine. Dr. Weldon noted that she had very limited range of motion in the lumbar spine and weakness, paresthesias, swelling and crepitation in her left lower extremities. He also indicated that appellant had weakness and paresthesias in the left forearm and hand and an unstable gait, which required the use of a cane for ambulation. Appellant had limited use of her left arm and left hand due to nerve damage. Dr. Weldon opined that she was totally disabled "due to her injury-related medical conditions." He also added that appellant's current disability was "a direct result of her on[-]the[-]job injury sustained on December 16, 2002."

On December 8, 2006 a hearing representative set aside the August 29, 2006 decision finding that there was an unresolved conflict in the medical evidence. The Office hearing representative noted that, at the time the Office referred the claimant to Dr. Sklar, there was a medical conflict regarding appellant work restrictions but no conflict on whether all residuals of the December 16, 2002 work injury had ceased. The hearing representative found that Dr. Sklar's opinion, that all residuals of the work injury had ceased, created a conflict with Dr. Weldon's opinion that appellant had continuing residuals of her work injury. The hearing representative directed that her compensation benefits be reinstated and directed that appellant be referred for a new impartial medical evaluation to resolve the conflict regarding residuals of the work injury.

On January 12, 2007 the Office referred appellant along with a statement of accepted facts and the medical record to Dr. Robert E. Holladay, a Board-certified orthopedic surgeon, for an impartial evaluation to resolve the conflict in opinion between Drs. Weldon and Sklar.

In a February 7, 2007 report, Dr. Holladay noted appellant's history of injury and treatment. He diagnosed torn medial meniscus, left knee; postoperative partial medial meniscectomy, left knee; lateral epicondylitis, left elbow and strain and sprain of the left wrist. Dr. Holladay examined appellant and noted findings which included full range of motion of the wrist and left hand with no evidence of atrophy. He related that there was no evidence of active condition of the left wrist related to the December 16, 2002 injury. Regarding the left elbow, Dr. Holladay noted localized tenderness over the lateral epicondyle and indicated that appellant did not have atrophy of the arm, but had full range of motion of the left elbow. He stated that the left knee had "voluntary restricted movement." Dr. Holladay explained that there was an "absence of any clinical, relevant objective physical findings." He noted that appellant would "not fully extend her knee." Dr. Holladay opined that it was "difficult to explain this on a medical basis based upon a torn meniscus[,] an arthroscopy and postoperative physical therapy." He determined that appellant was capable of light sedentary "desk-like activity." Dr. Holladay opined that appellant was capable of sitting for an eight-hour workday and could use her upper extremities for grasping, fine manipulation, pushing and pulling at desktop level. Dr. Holladay noted that she could occasionally stand and walk up to 200 feet before she needed a position break. He advised that appellant should avoid climbing steps, stairs or ladders and that she should avoid any lifting over 10 to 15 pounds on an occasional basis. Dr. Holladay added that she could frequently lift 10 pounds or less and that she could use a computer or other simple office equipment. He indicated that appellant could perform these tasks for at least eight hours a day. Dr. Holladay opined that there was no medical basis on which to attribute continuing residuals in the left knee, elbow or wrist. In a February 7, 2007 work restriction evaluation, he indicated that appellant could work within restrictions up to eight hours daily.

On March 13, 2007 the Office requested that Dr. Holladay clarify his opinion regarding whether appellant had continuing disabling residuals of her accepted work injury. In an April 18, 2007 addendum report, he opined that the medical evidence did not support continuing disability related to the December 16, 2002 injury.

On May 7, 2007 the Office proposed to terminate appellant's compensation on the basis that the weight of the medical evidence, as represented by the report of Dr. Holladay, established that the residuals of the work injury of December 16, 2002 had ceased.

On May 24 2007 appellant disagreed with the termination. She also submitted a May 18, 2007 report from Dr. Weldon, who opined that she had not recovered fully from her injuries and continued to have severe disabling pain and rigidity in her left knee, arm, elbow and lower back. He advised that appellant required ongoing medical care. Dr. Holladay noted findings and opined that she was totally and permanently disabled for at least six months.

By decision dated June 7, 2007, the Office terminated appellant's entitlement to compensation benefits effective June 7, 2007.

On July 3, 2007 appellant requested a review of the written record. In a June 25, 2007 report, Dr. Weldon opined that she was totally disabled due to low back, left arm and left knee injuries she sustained at work. He noted that appellant's work injuries affected her concentration and attention span which made her "unable to perform work duties." In a June 28, 2007 report, Dr. Janet Lewis, a Board-certified orthopedic surgeon and treating physician, noted treating appellant for left hand pain that started five years earlier. She diagnosed left lateral epicondylitis and carpal tunnel syndrome. Dr. Lewis advised that a fluoroscopy was normal for the left hand, wrist and elbow.

By decision dated December 28, 2007, the Office hearing representative affirmed the Office's June 7, 2007 decision.

On March 6, 2008 appellant requested reconsideration and submitted additional medical evidence. The additional medical evidence included a June 18, 2007 report from Dr. Christopher Hull, an osteopath and a Board-certified orthopedic surgeon, who diagnosed medial arthrosis of the left knee, obesity, mental disorder currently under treatment with psychiatrist, latex allergy and mild cardiac regurgitation. He examined appellant and opined that she had a chronic pain problem that was emotional but was also related to obvious damage in her left knee. Dr. Hull opined that her symptoms were related to her work-related injury. He recommended pain management. In a February 1, 2008 report, Dr. Weldon reiterated his opinion that appellant remained totally disabled.

In a February 28, 2008 report, Dr. Joe Daniels, an osteopath, noted treating appellant for a December 16, 2002 work injury. He advised that he previously indicated that she had reached maximum medical improvement. However, Dr. Daniels indicated that he "was only speaking from the surgery standpoint, regarding [appellant's] left knee and not to the patients overall injuries." He opined that appellant needed continued medical treatment and remained "totally disabled for the foreseeable future do to the extent of her injuries."

By decision dated July 2, 2008, the Office denied modification of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.²

The Federal Employees' Compensation Act³ provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the

¹ *Curtis Hall*, 45 ECAB 316 (1994).

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

³ 5 U.S.C. §§ 8101-8193, 8123(a).

Office shall appoint a third physician who shall make an examination.⁴ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁵

ANALYSIS -- ISSUE 1

The Office determined that a conflict of medical opinion existed regarding the issue of whether appellant's work-related conditions had resolved based on the opinions of Dr. Weldon, appellant's physician, who supported an ongoing employment-related condition and disability, and Dr. Sklar, an Office referral physician, who opined that the employment-related condition had resolved. Therefore, it properly referred appellant to Dr. Holladay, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict.

In his February 7, 2007 report, Dr. Holladay examined appellant and found no evidence of atrophy or an active condition of the left wrist or arm related to the December 16, 2002 employment injury. He also found full range of motion of the left elbow. Regarding appellant's left knee, Dr. Holladay explained that she had "voluntary restricted movement" and would "not fully extend her knee." He explained that she did not have any "clinical, relevant objective physical findings" and opined that it was "difficult to explain this on a medical basis based upon a torn meniscus for an arthroscopy and postoperative physical therapy." Dr. Holladay determined that appellant was capable of light sedentary "desk-like activity." He noted work restrictions, indicating that she could occasionally stand and walk for distances up to 200 feet before she needed to take a position break. Dr. Holladay indicated that appellant should avoid climbing steps, stairs or ladders and set forth lifting restrictions. He indicated that she no longer had residuals of her left knee, elbow or wrist.

On March 13, 2007 the Office requested clarification with regard to appellant's employment-related disability and residuals. When it secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report.⁶ As the Office needed clarification from Dr. Holladay regarding appellant's employment-related residuals, it properly requested clarification from him. In his supplemental report dated April 18, 2007, Dr. Holladay opined that the medical evidence did not support continuing disability related to the December 16, 2002 employment injury.

The Board finds that Dr. Holladay's opinion is not entitled to special weight as his reports are insufficiently rationalized to resolve the conflict in the medical evidence. Although Dr. Holladay indicated in his February 7, 2007 report that, the accepted conditions had resolved, he also noted that appellant had continuing work restrictions. When asked by the Office for

⁴ 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁵ *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

⁶ *Roger W. Griffith*, 51 ECAB 491 (2000).

clarification regarding disabling residuals, Dr. Holladay, in one sentence, advised that the medical evidence did not support continuing disability related to the December 16, 2002 employment injury. Dr. Holladay did not provide any further explanation or rationale addressing the reasons for his conclusion. The Board has held that medical opinion that is not fortified by rationale is of diminished probative value.⁷ Dr. Holladay's supplemental report only addressed employment-related disability. He did not address whether all residuals of the accepted conditions had ceased. This is important as the Office terminated all compensation benefits, not just wage-loss benefits. In neither of his reports did Dr. Holladay explain the apparent contradiction between his finding that appellant had fully recovered from her work injuries and his finding that she could only perform restricted work. He gave no medical explanation to support his opinion that appellant's accepted conditions had fully resolved and to explain why the work restrictions that he prescribed were not due to the accepted conditions. Therefore, Dr. Holladay's opinion is of diminished probative value as it contains insufficient medical rationale to support that appellant no longer has residuals of her work injury.

For these reasons, the Board finds that the Office improperly relied on the opinion of Dr. Holladay to establish that appellant had no remaining disability or residuals from her accepted employment injuries. The Board finds that the Office did not meet its burden of proof to terminate her compensation benefits as there remains an unresolved conflict in the medical evidence.

CONCLUSION

The Board finds that the Office did not meet its burden of proof in terminating appellant's benefits effective June 7, 2007.⁸

⁷ *Cecilia M. Corley*, 56 ECAB 662 (2005).

⁸ In light of the Board's disposition on the first issue, the second issue is moot.

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2008 and December 28, 2007 decisions of the Office of Workers' Compensation Programs are reversed.

Issued: August 4, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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