United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 08-2450**
	)	**Issued: August 24, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Newark, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On September 15, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated July 28 and February 5, 2008 denying modification of a March 22, 2007 decision terminating his compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's wage-loss benefits effective March 31, 2004 and medical benefits effective October 3, 2006; and (2) whether appellant met his burden of proof to establish that he had any continuing residuals or disability causally related to his November 2, 2000 employment injury after his benefits were terminated.

FACTUAL HISTORY

On November 2, 2000 appellant, a 44-year-old truck driver, pulled his back and felt a pain down his leg from pulling relay sacks. He stopped work on the date of injury and worked intermittently. The Office accepted the claim for a low back strain and paid appropriate benefits. Appellant was accepted into the supervisory training program and spent February through

May 2001 in school. In June 2001, he began working as a customer service supervisor. The Office accepted recurrences of disability on January 8 and June 18, 2003 and paid appropriate benefits. Appellant was eventually placed on the periodic compensation rolls.

In an October 1, 2003 report, Dr. Gerrard Ferrer, a Board-certified neurologist, stated that, barring any contrary indication by appellant's orthopedic surgeons appellant could return to work on November 3, 2003 without restrictions. He also completed a work restriction report releasing appellant to full duty on November 3, 2003. In an October 28, 2003 report, Dr. Ferrer noted that appellant's orthopedic surgeons advised that his symptoms were not orthopedic in etiology and thus appellant had no restrictions. He reported that appellant continued to have low back pain complaints. Physical examination demonstrated no palpable tenderness or muscle spasms. Range of motion was good although hesitancy was noted by appellant due to subjective pain complaints. Dr. Ferrer diagnosed chronic low back pain of unclear etiology. He explained that there was no clear neurological reason for appellant's complaints, concluded there was no reason for him to be disabled and opined that he could work. On November 14, 2003 Dr. Ferrer reported that diagnostic testing did not show any objective neurologic or orthopedic basis for appellant's subjective complaints. He noted referring appellant to Dr. Jay Tendler, a Board-certified anesthesiologist, for pain management.

On November 4, 2003 Dr. Tendler noted appellant's complaints of constant dull pain. Physical examination findings demonstrated normal strength, limited extension due to pain, and paraspinal tenderness and muscle spasm. He diagnosed a "pseudo addition" and mechanical back pain. Dr. Tendler opined that appellant was totally disabled. He requested authorization to perform caudal trigger injections. On November 24, 2003 the Office notified Dr. Tendler that the requested injections were not authorized as the medical evidence did not support a neurological or orthopedic condition or need for the treatment.

In a November 13, 2003 report, Dr. Paul Hriso, a psychiatrist, advised that appellant's depression and inability to function as before was directly related to his low back injury. On February 12, 2004 appellant underwent a computerized tomography (CT) discogram, which showed probable left lateral disc bulging at L5-S1, facet arthrosis at L4-5 and L5-S1 with foraminal narrowing on the left at L5-S1 and a small left central disc herniation at L5-S1.

The Office referred appellant to Dr. David Rubinfeld, a Board-certified orthopedic surgeon, for a second opinion. In a March 6, 2004 report, Dr. Rubinfeld reviewed appellant's history and noted that he advised that back surgery was pending. Cervical spine and thoracolumbar spine examination showed normal range of motion with no tenderness upon palpation and no spasm. Straight leg raising was 85 degrees bilaterally in the supine and sitting positions. Motor strength was normal in the upper and lower extremities and deep tendon reflexes and sensation were also intact in the upper and lower extremities. Dr. Rubinfeld diagnosed degenerative arthritis of the lumbar spine. He opined that appellant had fully recovered from the November 2, 2000 work injury and was able to return to his work as a customer service supervisor without restriction. Dr. Rubinfeld further opined that no injections were required. He also completed an OWCP-5c work capacity evaluation.

In a March 31, 2004 decision, the Office terminated appellant's wage-loss and medical benefits based on the opinion of Dr. Rubinfeld. Appellant requested an oral hearing which was held November 30, 2004.

Appellant submitted several medical reports. In a February 27, 2004 report, Dr. Ferrer noted that a discogram showed an inflamed disc at L3-4. He also referred appellant to Dr. Ramesh Babu, a neurosurgeon. On March 9, 2004 Dr. Babu noted appellant's 2000 work-related back injury and an examination, he reported severe bilateral lumbar spasm, a bilateral straight leg raising test positive at 40 degrees and complaints of severe back pain. He opined that appellant should have lumbar spine surgery based on the positive discogram and significant back pain. Dr. Babu opined that appellant's current condition was caused by his work injury. In an April 20, 2004 report, Dr. Tendler noted treating appellant for low back pain due to his November 2, 2000 work injury. He advised that treatment and medication had not provided long-term pain relief for appellant and that he was awaiting surgery for L4-5 fusion. On June 17, 2004 Dr. Tendler explained that appellant's pain complaints were consistent with a normal physical examination, normal electromyogram (EMG) and a magnetic resonance imaging (MRI) scan. He stated a discography was diagnostic of appellant's condition. Dr. Tendler opined that appellant's pain was related to disc pathology sustained while lifting at work. He additionally stated a disc fusion was the most effective treatment for this type of pain.

On July 19, 2005 an Office hearing representative set aside the Office's March 31, 2004 decision and remanded the case to the Office. The hearing representative found a medical conflict between Dr. Babu, for appellant, and Dr. Rubinfeld, the second opinion physician, regarding continuing residuals of the work injury. The Office was directed to obtain medical evidence from appellant's physicians from 2001 to 2002, update the statement of accepted facts and refer him to an impartial specialist to resolve the medical conflict.

The Office undertook additional development as directed. The medical records for 2001 and 2002 consisted of brief handwritten notes of office visits and pharmacy records. The Office referred appellant to Dr. Iqbal Ahmad, a Board-certified orthopedic surgeon, for a second opinion.[1] In an October 25, 2005 report, Dr. Ahmad reviewed appellant's history and noted examination findings. He diagnosed lumbar strain and prior degenerative changes of the spine. Dr. Ahmad opined that appellant had a lumbar sprain on November 2, 2000 and there was no evidence that this injury aggravated his preexisting degenerative changes in the lumbar spine. He noted that physical examination did not reveal any significant abnormalities and opined that appellant could return to regular-duty work with no need for further treatment. A work capacity evaluation was submitted.

On November 23, 2005 the Office terminated appellant's medical benefits finding that Dr. Ahmad's reports established that he no longer had residuals of the accepted injury. Appellant disagreed with the decision and requested an oral hearing.

On March 15, 2006 an Office hearing representative set aside the November 23, 2005 decision. The hearing representative found an unresolved conflict in medical opinion between

[1] An Office memorandum indicated that, as the 2001 and 2002 medical records were not of record at the time of Dr. Rubinfeld's examination, appellant should be referred for another second opinion evaluation.

Drs. Babu and Ahmad and remanded the case for referral of appellant to an impartial medical specialist to resolve the conflict on the issue of any continuing medical residuals and disability related to the accepted condition. The hearing representative found that the Office did not meet its burden to justify termination of medical benefits and that appellant was entitled to reinstatement of medical benefits.

On April 5, 2006 appellant filed a Form CA-7 claiming compensation from wage loss from October 31, 2004 to the present. Subsequent Form CA-7 claims were received along with additional reports from Dr. Tendler diagnosing discogenic back pain. He also requested authorization for low back surgery.

The Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Avrill Berkman, a Board-certified orthopedic surgeon, for an impartial evaluation. In a June 22, 2006 report, Dr. Berkman reviewed the statement of accepted facts and the history of appellant's November 2, 2000 work injury and medical treatment. On examination, he reported normal gait, severe low back pain at 70 degrees bilaterally, a restriction in lumbar motion with loss of a normal spinal rhythm, no tenderness or spasm in the lumbar spine and mild generalized tremors. Dr. Berkman described the results of his examination of the cervical spine, hips and lower extremities, but noted there may have been incomplete subjective effort with respect to manual muscle testing. He opined that appellant's low back strain sustained as a result of the November 2, 2000 work injury had resolved. Dr. Berkman stated that appellant had degenerative joint disease of the lumbar spine and his subjective pain was secondary to nonwork-related degenerative changes. He stated that appellant's degenerative arthritis of the lumbar spine would have been symptomatic and progressive in response to ordinary, everyday activities and independent of the work injury. Dr. Berkman stated that the February 12, 2004 computerized tomography (CT) scan discogram supported such conclusion as disc bulging, degenerative joint disease and arthritis with facet arthrosis. He advised that these were common findings expected in conjunction with progressive degenerative joint disease and lumbar spine arthritis. Dr. Berkman stated that the November 30, 2000 and January 17, 2003 MRI scans of the lumbar spine also demonstrated that appellant had degenerative joint disease and arthritis of the lumbar spine unrelated to any injury, including the November 2, 2000 work incident. He further advised that a diagnosis of discogenic low back pain made with discography was controversial and advised a definite additional source for severe low back pain was inflammatory arthritis. Dr. Berkman concluded that appellant required no further medical treatment for any condition related to the November 2, 2000 work incident and that his subjective complaints of pain were secondary to the nonwork-related degenerative process. He further opined that any work restrictions would be attributable to the nonwork-related preexisting degenerative condition.

By decision dated October 3, 2006, the Office terminated appellant's entitlement to medical benefits effective October 2, 2006 on the basis of Dr. Berkman's impartial medical opinion and denied authorization for low back surgery. It also found compensation for wage loss had been properly terminated effective March 21, 2004.[2]

[2] This is typographical error. The date should be March 31, 2004.

Appellant requested an oral hearing, which was held on February 7, 2007. At the hearing, his attorney questioned if Dr. Berkman was properly selected to resolve the medical conflict. Appellant submitted a January 18, 2007 lumbar spine MRI scan report. In a December 15, 2005 report, Dr. Hriso noted treating him since November 5, 2003. He stated that appellant had chronic debilitating back pain and chronic depression due to severe back pain and his inability to be productive.

In a March 22, 2007 letter, an Office hearing representative found the Office properly terminated appellant's wage-loss compensation effective March 31, 2004. The hearing representative further found that appellant had recovered without residuals from the effects of the work injury by October 3, 2006 and accorded special weight to Dr. Berkman's impartial opinion. The hearing representative found that Dr. Berkman was properly selected as the impartial medical specialist using the Physician's Directory System (PDS) and appellant submitted no probative evidence of bias on the part of Dr. Berkman.

On August 23, 2007 appellant requested reconsideration and informed the Office that he underwent back surgery on March 22, 2007. Medical reports from Dr. Frank M. Moore, a Board-certified neurosurgeon, were submitted. In a February 12, 2007 report, he noted appellant's history of low back pain with radiation into both legs after initial trauma on November 2, 2000. Dr. Moore reported appellant's medical treatment and findings and diagnosed significant mechanical low back pain. He noted the results of a February 2004 discogram and indicated that appellant was a candidate for a repeat discogram. In a March 5, 2007 report, Dr. Moore noted the results of a February 26, 2007 discogram correlated with the MRI scan findings of discogenic disease at L4-5 and central bulge at L5-S1. He opined that appellant was a candidate for lumbar decompression, fusion and instrumentation at L4-5 and L5-S1. In a November 14, 2007 report, Dr. Moore noted that appellant was initially evaluated on February 12, 2007 and discussed his condition before and after the March 22, 2007 back surgery. He stated that appellant initially injured his back on November 2, 2000 and years of conservative modalities failed. Dr. Moore stated the discogram was positive and appellant required surgery. He noted that discography was an accepted form of preoperative evaluation for patients with mechanical, axial and low back pain. Dr. Moore advised the issue with mechanical low back pain was one of instability and any prior examinations that failed to demonstrate weakness or sensory changes would not deter from appellant's symptoms and a need for surgery. Copies of the reports relating to appellant's March 22, 2007 back surgery were submitted.

By decision dated January 9, 2008, the Office denied modification of the prior decision with respect to the issue of continuing disability.

On January 28, 2008 the Office received a January 14, 2008 report from Dr. Moore, who opined that appellant's current low back condition and the March 22, 2007 surgery were related to his November 2, 2000 work injury.

By decision dated February 5, 2008, the Office reissued its January 9, 2008 decision. By decision dated April 29, 2008, it denied modification of its prior decisions. The Office specifically addressed Dr. Moore's January 14, 2008 report. It reissued the April 29, 2008 decision on July 28, 2008.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.[3] After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[4] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[6] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[7]

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 of the Secretary shall appoint a third physician who shall make an examination.[8] 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.[9]

A physician selected by the Office to serve as an impartial medical specialist should be wholly free to make a completely independent evaluation and judgment. To achieve this, the Office has developed specific procedures for the selection of impartial medical specialists designed to provide safeguards against any possible appearance that the selected physician's opinion is biased or prejudiced. The procedures contemplate that impartial medical specialists will be selected from Board-certified specialists in the appropriate geographical area on a strict rotating basis in order to negate any appearance that preferential treatment exists between a particular physician and the Office.[10] The procedures provide that the selection of referee physicians (impartial medical specialists) is made through a strict rotational system using appropriate medical directories. The procedure manual provides that the PDS should be used for this purpose wherever possible.[11] The PDS is a set of stand-alone software programs designed to

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[3] *Paul L. Stewart*, 54 ECAB 824 (2003).

[4] *Elsie L. Price*, 54 ECAB 734 (2003).

[5] *See Del K. Rykert*, 40 ECAB 284 (1988).

[6] *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Furman G. Peake*, 41 ECAB 361 (1990).

[7] *T.P.*, 58 ECAB __ (Docket No. 07-60, issued May 10, 2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

[8] 5 U.S.C. § 8123(a); *F.R.*, 58 ECAB __ (Docket No. 05-15, issued July 10, 2007).

[9] *Darlene R. Kennedy*, 57 ECAB 414 (2006).

[10] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4b (May 2003); *See also Willie M. Miller*, 53 ECAB 697 (2002).

[11] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4b (May 2003).

support the scheduling of second opinion and referee examinations. The PDS database of physicians is obtained from the American Board of Medical Specialties (ABMS) Directory of Board-certified Medical Specialists which contains the names of physicians who are Board-certified in certain specialties.[12]

ANALYSIS -- ISSUE 1

Appellant's claim for an injury on November 2, 2000 was accepted for a low back strain. He has been a supervisor customer service since June 2001. Appellant has been off work since June 18, 2003 and underwent low back surgery on March 22, 2007.

With regard to the issue of termination of compensation for wage-loss benefits, the Office terminated payment of compensation for wage loss as of March 31, 2004. The record reflects appellant was placed on the periodic rolls after it accepted his June 18, 2003 recurrence claim. Dr. Ferrer, appellant's treating physician, opined that appellant could return to work without restriction on November 3, 2003. He further noted, in his October 28, 2003 report, that appellant's orthopedic surgeons found that his symptoms were not orthopedic in nature and thus no work restrictions were needed. In his November 4, 2004 report, Dr. Tendler opined that appellant was totally disabled. While he diagnosed mechanical back pain and provided findings on examination, he provided no explanation for his opinion that appellant was disabled due to his back condition or whether appellant's back condition and disability were due to the November 2, 2000 work injury. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.[13] The Board therefore finds that Dr. Tendler's report is of limited probative value regarding whether appellant's disability was causally related to the November 2, 2000 work injury.[14] None of the other reports of record provide an opinion on whether appellant continued to be totally disabled from the November 2, 2000 work injury.

Dr. Rubinfeld, an Office referral physician, opined that in his March 6, 2004 report, that appellant had fully recovered from the November 2, 2000 work injury and was able to return to work as customer service supervisor without restriction. His opinion was based on a complete and accurate factual and medical background and normal examination findings. While Dr. Rubinfeld did not have the medical documentation from appellant's treating physicians for the period 2001 to 2002, this would not diminish the probative value of his opinion on whether appellant had any present disability due to the November 2, 2000 work injury. The Office met its burden of proof to terminate appellant's wage-loss compensation effective March 31, 2004.

With regard to the termination of medical benefits, the Office terminated these benefits effective October 3, 2006. The record reflects it originally referred appellant for a second opinion with Dr. Rubinfeld, who on March 6, 2004, opined that he had fully recovered from the November 2, 2000 work injury, needed no further medical treatment and could return to work

[12] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.7 (May 2003).

[13] *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[14] *See Leslie C. Moore*, 52 ECAB 132 (2000).

without restrictions. Dr. Babu and Dr. Tendler, appellant's treating physicians, opined that appellant continued to have residuals of the work injury and required lumbar spine surgery. In further developing the claim, the Office referred appellant to Dr. Ahmad for another second opinion regarding whether he had residuals of the work injury. On October 25, 2005 Dr. Ahmad opined that appellant had a lumbar strain on November 2, 2000 and there was no evidence that this injury aggravated his preexisting degenerative changes in the lumbar spine. He found no significant abnormalities on examination and opined that appellant could work regular duty with no need for further treatment. As a dispute existed between appellant's treating physicians and Dr. Ahmad regarding whether appellant had any continuing residuals of the November 2, 2000 work injury, the Office properly referred his case to Dr. Berkman, for an impartial medical examination.[15]

The Board finds that Dr. Berkman, the impartial medical specialist, based his opinion on a proper factual and medical background. Dr. Berkman was provided with a copy of the case file, a list of questions and an amended statement of accepted facts. He set forth the results of his physical examination and opined that the accepted low back strain on November 2, 2000 had resolved. Dr. Berkman advised that appellant had degenerative joint disease of the lumbar spine and his subjective pain was due to nonwork-related degenerative changes. He explained that appellant's degenerative arthritis of the lumbar spine would have been symptomatic and progressive independent of the work injury and referenced various objectives testing to support his conclusion that appellant's degenerative joint disease and arthritis of the lumbar spine were unrelated to the November 2, 2000 work injury. Dr. Berkman concluded that appellant required no further medical treatment for any condition related to the November 2, 2000 injury and that any work restrictions would be attributable to appellant's nonwork-related preexisting degenerative condition.

Dr. Berkman offered a medical opinion that is sound, rational and logical. Because the opinion of the impartial medical specialist is based on a proper history and is sufficiently rationalized, the Board finds that it must be accorded special weight in resolving the conflict.

Appellant did not submit sufficient medical evidence to overcome the weight of Dr. Berkman's opinion or to create a new conflict. The January 18, 2007 MRI scan of the lumbar spine contains no opinion on causal relationship and, thus, is insufficient to create a new conflict. While Dr. Hriso opined that in his December 15, 2005 report that appellant had chronic debilitating back pain and depression, he offered no opinion on causal relationship. Furthermore, since he is a psychiatrist and not a specialist of the back, his opinion is of lesser probative value[16] and is insufficient to cause a conflict or overcome the weight of Dr. Berkman's opinion.

As the weight of the medical opinion evidence supports that appellant no longer has any residuals due to the November 2, 2000 work injury, the Board finds that the Office met its burden of proof in terminating his medical benefits effective October 3, 2006.

[15] *Darlene R. Kennedy*, 57 ECAB 414 (2006).

[16] The opinion of a physician who has special training and knowledge in a specialized medical field has greater probative value than the opinion of an individual who is not a specialist. *See Earl J. Mills*, 12 ECAB 462 (1961).

Appellant's counsel contends that Dr. Berkman's report is insufficient to carry special weight. While he suggests the Office should have sought clarification from Dr. Berkman as to whether the back condition was aggravated by the work injury, the Board notes that Dr. Berkman specifically addressed the objective evidence and explained that such evidence failed to demonstrate that appellant's preexisting degenerative joint disease and arthritis of the lumbar spine was related to the November 2, 2000 work injury.

Appellant's counsel further contends that clarifying information is needed from the Office regarding the selection of Dr. Berkman from the PDS. It found that Dr. Berkman was properly selected as the impartial medical specialist from the PDS. On appeal, counsel notes that Dr. Berkman's address on the PDS is different than the address listed on Dr. Berkman's June 22, 2006 report and questioned whether the physician who wrote the June 22, 2006 report was the same physician selected on the PDS. While Dr. Berkman's practice has more than one address, this is no basis to require clarification from the Office over the selection of him as the impartial medical examiner. There is no probative evidence that he is not the same physician selected from the PDS by the Office. Furthermore, counsel submitted no evidence that Dr. Berkman was biased against appellant.[17] He did not object to the selection of Dr. Berkman prior to his examination or raise any arguments against the selection of Dr. Berkman until the February 7, 2007 hearing, almost a year after Dr. Berkman was selected. Appellant's argument on appeal is insufficient to show that the Office failed to comply with its rotational procedures.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.[18]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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 appellant's diagnosed condition and the implicated employment factors.[19] The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.[20]

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[17] An impartial medical specialist properly selected will be presumed unbiased and the party seeking disqualification bears the substantial burden of proving otherwise. *James F. Weikel*, 54 ECAB 660 (2003).

[18] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008). *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

[19] *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

[20] *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that he has any continuing residuals or disability due to the November 2, 2000 work injury.

On reconsideration, appellant submitted reports from Dr. Moore dated February 12, March 5 and November 14, 2007 and January 14, 2008. The February 12 and March 5, 2007 reports note examination findings and test results. The November 14, 2007 report discusses the March 22, 2007 back surgery and notes why appellant needed surgery. The January 14, 2008 report states without any medical rationale or explanation, that appellant's current back condition and March 22, 2007 back surgery were related to his November 2, 2000 work injury. Dr. Moore's report is limited probative value in that he did not provide a clear opinion explaining the reasons appellant's November 2, 2000 low back strain caused or contributed to a continuing back condition and subsequent surgery. He did not otherwise provide medical rationale explaining how appellant's employment could have caused or aggravated his preexisting degenerative back condition. Dr. Moore's report is insufficient to establish a continuing work-related condition or disability and it is insufficient to overcome the report of Dr. Berkman or to create a new conflict in the medical evidence.

Other medical evidence provided by appellant did not specifically address causal relationship of his continuing condition and his November 2, 2000 low back strain. Thus, he has not established that he has any continuing residuals or disability or that the March 22, 2007 back surgery, were due to the November 2, 2000 work injury.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's wage-loss benefits effective March 31, 2004 and medical benefits effective October 2, 2006. The Board further finds that appellant did not establish that he had any continuing residuals or disability of the November 2, 2000 work injury after his wage-loss and medical benefits were terminated.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decisions dated July 28 and February 5, 2008 are affirmed.

Issued: August 24, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board