

sprain/strain of the right upper arm/shoulder. By letter dated October 23, 2003, it placed appellant on the periodic rolls for temporary total disability.

On March 23, 2005 the Office referred appellant to Dr. Richard T. Sheridan, a Board-certified orthopedic surgeon, to determine whether he continued to have residuals from the accepted conditions and his work capability. In a report dated April 14, 2005, Dr. Sheridan concluded that appellant no longer had any residuals from the accepted lumber or right shoulder conditions. He found that appellant was capable of working without physical restrictions. Range of motion for the shoulder revealed 180 degrees for flexion and abduction, 50 degrees for extension and adduction and 90 degrees for internal and external rotation. There was no evidence of impingement syndrome, rotator cuff tear or tendinitis. An examination of the lumbar spine revealed no abnormal flexion or rotation. Dr. Sheridan reviewed a March 25, 2004 magnetic resonance imaging (MRI) scan of the lumbar spine, which showed an L4-5 and L3-4 bulging disc. A March 25, 2005 MRI scan of the left shoulder showed rotator cuff tendinitis, some subdeltoid muscle bursitis and acromioclavicular (AC) joint arthritis with moderate narrowing. Diagnostic testing of the right shoulder was negative, with a normal electromyogram and nerve conduction studies of June 13, 2003. Dr. Sheridan advised that appellant had spondylosis with degenerative disc changes of the lumbar spine.

On June 16, 2005 the Office proposed to terminate appellant's compensation. It found that the weight of the medical opinion was represented by Dr. Sheridan who determined that his accepted conditions had resolved. The Office allowed appellant 30 days to submit additional evidence. In a June 23, 2005 letter, appellant noted his disagreement with the proposal to terminate his benefits.

By decision dated July 18, 2005, the Office terminated appellant's compensation benefits effective July 23, 2005.

Subsequent to the July 18, 2005 decision, the Office received a July 15, 2005 note from Dr. Paul R. Lewis, a treating physician, who disagreed with Dr. Sheridan's conclusion that appellant's accepted conditions had resolved. Dr. Lewis noted that appellant injured his back and shoulder while lifting mail in 1998, which resulted in a permanent disability.

On July 28, 2005 appellant requested reconsideration.

By decision dated September 26, 2005, the Office denied modification of its July 18, 2005 decision. It found that Dr. Lewis did not provide any findings based on physical examination.

In a September 28, 2005 report, Dr. Phillip A. Tibbs, a Board-certified neurologist, noted that a September 16, 2006 lumbar MRI scan revealed L3-4, L4-5 and L5-S1 disc deterioration with facet arthropathy. He stated that appellant's incapacity was "due to a work injury superimposed on degenerative disc disease."

On October 13, 2005 appellant requested reconsideration. In an August 18, 2005 report, Dr. Laura C. Reese, a treating osteopath, reported very limited right shoulder range of motion, atrophy of the triceps and trigger points on the right trapezius muscles.

By decision dated December 6, 2005, the Office denied modification of its July 18, 2005 decision.

On December 13, 2005 and December 4, 2006 appellant requested reconsideration. On December 3, 2006 his representative requested reconsideration and presented argument in support of his request.

In a July 12, 2006 report, Dr. John W. Ellis, a treating Board-certified family practitioner, reviewed the medical evidence and conducted a physical examination. He diagnosed right shoulder joint pain, right shoulder sprain/strain, right shoulder adhesive capsulitis, lumbar aggravation, L3-4 and L4-5 disc derangement and lumbosacral muscle tendon strain. Physical examination revealed decreased right shoulder range of motion, tenderness on palpitation of the AC joint, decreased back range of motion and spasms in the lumbar paraspinal musculature. Dr. Ellis advised that the employment injury had permanently aggravated the preexisting degenerative disc disease of the lumbar spine. He concluded that appellant continued to have residuals of his accepted May 29, 2002 employment injury. Physical examination of the low back showed loss of range of motion, spasms, tenderness, antalgic gait and positive left straight leg raising.

In a November 26, 2006 report, Dr. Reese opined that appellant continued to have residuals of the right shoulder condition caused by the May 29, 2002 employment injury.

By decision dated February 27, 2007, the Office denied modification of its July 18, 2005 decision.

In a July 29, 2007 letter appellant, through his representative, requested reconsideration. He submitted a May 8, 2007 report by Dr. Ellis, a June 26, 2007 report by Dr. Reese, a July 13, 2007 addendum by Dr. S. Douglas Deitch, an examining physician, and a December 8, 2006 report by Dr. Tibbs. Dr. Ellis stated that Dr. Sheridan's report was devoid of any historical information regarding appellant's injury and noted that the physician never referenced the date of injury. Dr. Tibbs reviewed his record and opined that it was "medically probable that [appellant's] work-related injury of May 29, 2002 permanently and significantly aggravated [his] lumbar condition." Dr. Reese diagnosed chronic degenerative AC joint disease, right shoulder adhesive capsulitis and right bursitis and rotator cuff tear. Dr. Deitch concluded that appellant's May 29, 2002 employment injury directly caused his right shoulder rotator cuff tendinitis and impingement syndrome and aggravated his lumbar radiculopathy and chronic mechanical lower back pain.

By decision dated October 26, 2007, the Office denied modification of its July 18, 2005 decision.

In February 20, 2008 letter appellant, through counsel, requested reconsideration. In a December 12, 2007 report, Dr. Barry Maron, a Board-certified orthopedic surgeon, reviewed the medical and factual evidence. He stated that Dr. Sheridan failed to support his conclusion that appellant no longer had any residuals of the accepted May 29, 2002 employment injury with adequate supporting evidence or rationale. Dr. Maron stated that Dr. Sheridan failed to reconcile the findings of the March 25, 2004 MRI scans of the back and right shoulder when he found that

appellant's accepted conditions had resolved. Based upon his review of the medical evidence and statement of accepted facts, he opined that appellant's accepted right upper extremity conditions had not resolved at the time of Dr. Sheridan's examination.

By decision dated June 11, 2008, the Office denied modification of its July 18, 2005 decision.

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.¹ 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.² Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁵

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss and medical benefits based on the March 1, 2001 report of Dr. Sheridan, an Office referral physician, who reviewed appellant's medical and employment history, examined him and found no objective evidence of ongoing residuals or disability due to the accepted right shoulder and low back conditions. Dr. Sheridan reviewed the results of diagnostic testing and noted that appellant had preexisting degenerative disease. He advised that appellant could work without restrictions. Dr. Sheridan reported essentially normal findings on physical examination and noted no objective evidence of the accepted employment conditions as the basis for his opinion that he could work without restrictions. Appellant no longer had any residuals or disability due to his accepted employment-related conditions and required no further medical treatment.

The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed

¹ *D.G.*, 59 ECAB ___ (Docket No. 08-1139, issued September 24, 2008); *Paul L. Stewart*, 54 ECAB 824 (2003).

² *S.F.*, 59 ECAB ___ (Docket No. 08-426, issued July 16, 2008). *Elsie L. Price*, 54 ECAB 734 (2003).

³ *See J.M.*, 58 ECAB ___ (Docket No. 06-661, issued April 25, 2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁴ *T.P.*, 58 ECAB ___ (Docket No. 07-60, issued May 10, 2007).

⁵ *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *James F. Weikel*, 54 ECAB 660 (2003).

in support of stated conclusions.⁶ Dr. Sheridan fully discussed the history of injury and explained that there were no objective findings to support that appellant had any continuing employment-related residuals or disability. The Board finds that his opinion is detailed, well rationalized and based upon a complete and accurate history and therefore represents the weight of the medical evidence. The Office met its burden of proof to terminate compensation.

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.⁷ 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.

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.⁸ 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.⁹

Section 8123(a) of the Federal Employees' Compensation Act 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.¹⁰

ANALYSIS -- ISSUE 2

Following the Office's July 18, 2005 termination decision, appellant requested reconsideration and submitted medical evidence to support his allegation of continuing employment-related disability.

In a July 12, 2006 report, Dr. Ellis, a treating Board-certified family practitioner, reviewed the medical evidence and set forth findings on physical examination. He diagnosed right shoulder joint pain, sprain/strain and adhesive capsulitis. Dr. Ellis also diagnosed L3-4 and

⁶ See *K.W.*, 59 ECAB ____ (Docket No. 07-1669, issued December 13, 2007); *Ann C. Leanza*, 48 ECAB 115 (1996).

⁷ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

⁸ *Kathryn E. Demarsh*, see *supra* note 5.

⁹ *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ 5 U.S.C. § 8123(a); see *Y.A.*, 59 ECAB ____ (Docket No. 08-254, issued September 9, 2008).

L4-5 disc derangement and lumbosacral muscle tendon unit strain, noting that appellant's condition was aggravated by his accepted injury.¹¹ He concluded that appellant continued to have residuals of the May 29, 2002 employment injury based upon the findings on physical examination of decreased range of motion, right shoulder crepitation, spasms, tenderness, antalgic gait and positive left straight leg raising.

The Board finds that the report from Dr. Ellis creates a conflict in the medical opinion with Dr. Sheridan, the referral physician. Dr. Ellis attributed appellant's right shoulder and low back conditions to his accepted employment injury. He advised that appellant continued to have residuals of his accepted right shoulder and back conditions. This is contrary to the opinion of Dr. Sheridan, who found that the accepted conditions had resolved. Given the disagreement between these two physicians, the Board finds that further development of the evidence is warranted. Accordingly, the Board will set aside the Office's October 26, 2007 and June 11, 2008 decision, with respect to the issue of continuing disability and residuals. The case will be remanded to the Office for referral of appellant, the case record and a statement of accepted facts to an appropriate impartial medical specialist to resolve the outstanding conflict in medical evidence. After such further development as it deems necessary, the Office shall issue a *de novo* decision.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective July 23, 2005 on the grounds that he no longer had any residuals or disability causally related to his accepted right shoulder and low back conditions. However, the medical evidence reveals a conflict on whether the accepted employment injury continues to disable appellant from work. Further, development of the medical evidence is warranted.

¹¹ The Board notes that following the July 18, 2005 termination decision appellant also submitted reports from Drs. Deitch, Lewis, Maron, Reese and Tibbs. These physicians opined that appellant continued to have disability and residuals from his accepted employment injury with no supporting medical rationale.

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2008 and October 26, 2007 decisions of the Office of Workers' Compensation Programs are affirmed, in part and set aside in part. The case is remanded to the Office for further action in conformance with this decision.

Issued: July 20, 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