

form alleging an injury on June 21, 1999 when she fell while attempting to sit in a chair. This claim was accepted for neck and lumbosacral sprains. Appellant did not return to work.

The attending physician, Dr. Borina Dramov, a neurologist, continued to report that appellant was totally disabled for work. The Office referred appellant for a second opinion examination by Dr. Robert Ferretti, an orthopedic surgeon. By report dated October 2, 2006, Dr. Ferretti provided a history and results on examination. He stated that he found no objective evidence that the employment-related conditions were currently active and there were no objective findings to support continuing complaints from the specific injuries of February 4, 1998 and June 21, 1999. Dr. Ferretti indicated that appellant was unable to work in her previous position or in a full-time position. He noted that appellant had underlying conditions of arthritis, hypertension and obesity, stating that the “disability is a combination of work injuries, primarily the first with underlying conditions. The underlying conditions prevent [appellant] from returning to her position as a [modified] office clerk...” Dr. Ferretti further stated that, if appellant “had only residuals of her two work injuries, she would be capable of returning to at least the modified duties she was performing beginning [June 6, 1999] up until the [June 21, 1999] injury.”

The Office requested clarification from Dr. Ferretti with respect to an employment-related disability. In a report dated January 17, 2007, Dr. Ferretti responded that the work injuries occurred in conjunction with the natural progression of her nonindustrial conditions of rheumatoid and osteoarthritis, hypertension and obesity. He further stated, “The nonindustrial conditions are the basic factor in causing her inability to work... [Appellant’s] physical restrictions are related solely to the effects of her nonindustrial condition.” Dr. Ferretti again noted there were no objective findings to support continued complaints related to the work injuries.

In a report dated December 22, 2006, Dr. Dramov diagnosed concussion with postconcussion syndrome, cervical spondylosis with radiculopathy, lumbar radiculopathy and left shoulder tendinitis. She opined that all of these conditions were work related and appellant was totally disabled.

The Office found a conflict in the medical evidence existed and referred appellant to Dr. Jack Stehr, a Board-certified orthopedic surgeon. In a report dated October 15, 2007, Dr. Stehr provided a history, results on examination and review of medical records. He stated, “There is no objective medical evidence that [appellant’s] work[-]related contusion to her coccyx and low back that occurred on February 4, 1998 and her cervical and lumbosacral sprains that occurred on June 21, 1999 are currently active and causing objective findings. Her current symptoms are secondary to significant preexisting degenerative disc disease of her cervical and lumbosacral spine that are well documented on x-rays.” Dr. Stehr reported no objective findings to support that appellant’s current condition was related to the work injuries of February 4, 1998 and June 21, 1999. He concluded, “There is no medical disability connected to [appellant’s] work injuries that would prevent [appellant] from returning to her previous position. Her current disabilities, however, are secondary to well-established preexisting degenerative arthritis of her cervical and lumbosacral spine, rheumatoid arthritis and obesity, all of which are not work related.”

In a letter dated January 11, 2008, the Office notified appellant of a proposed termination of compensation for wage-loss and medical benefits, based on the weight of the medical evidence as represented by Dr. Stehr. Appellant submitted a report dated January 26, 2008 from Dr. Dramov, who again opined that appellant was totally disabled due to her employment-related injuries. Dr. Dramov stated that magnetic resonance imaging (MRI) scan from 1999 showed cervical disc disease and lumbar herniated discs. She also stated that appellant was working with rheumatoid arthritis at the time of both her injuries and all residuals and disability were caused by the employment incidents.

By decision dated March 21, 2008, the Office terminated compensation for wage-loss and medical benefits. It found the weight of the evidence was represented by Dr. Stehr.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.² The right to medical benefits is not limited to the period of entitlement to disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.³

The Federal Employees' Compensation Act provides that, if there is a 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 the examination.⁴ The implementing regulations state 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.⁵

It is well established that, when a case is referred to a referee physician 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.⁶

¹ *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

² *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

³ *Frederick Justiniano*, 45 ECAB 491 (1994).

⁴ 5 U.S.C. § 8123.

⁵ 20 C.F.R. § 10.321 (1999).

⁶ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

ANALYSIS

The accepted conditions in this case were contusions to the back and coccyx, as well as cervical and lumbosacral sprains. For these conditions, it is the Office's burden of proof to terminate compensation. There was a conflict between the attending physician, Dr. Dramov, and the second opinion physician, Dr. Ferretti, regarding a continuing employment-related disability. Dr. Dramov opined that appellant was totally disabled as a result of her employment-related injuries, while Dr. Ferretti indicated that any current work restriction was related to the underlying, nonemployment-related arthritis, hypertension and obesity.

The Office asked the referee physician, Dr. Stehr, to provide an opinion as to whether the accepted contusions and sprains were currently active and causing objective findings. Dr. Stehr provided a rationalized medical opinion on the issues presented. He offered a complete history and reviewed medical records. Dr. Stehr opined that there was no objective evidence that the employment injuries were currently active. He found that the current symptoms were secondary to preexisting arthritis and obesity, which were not employment related.

As noted above, the opinion of a referee physician, when based on a complete background and supported by medical rationale, is entitled to special weight. The Board finds that Dr. Stehr's opinion is entitled to special weight and represents the weight of the medical evidence in this case. The Office met its burden of proof to terminate compensation for wage-loss and medical benefits based on the accepted conditions.

With respect to the diagnoses provided by Dr. Dramov, including postconcussion syndrome, cervical spondylosis with radiculopathy, lumbar radiculopathy and left shoulder tendinitis, it is appellant's burden of proof to establish the diagnosed conditions as employment related. Once established as employment related, appellant would have to show she had continuing residuals of the condition or continuing disability after March 21, 2008.⁷ Dr. Dramov opined in the December 22, 2006 report that the employment injuries caused damage to the back involving the L5-S1 nerve root, without providing additional medical rationale or explaining how appellant's current condition was causally related to the employment injuries. She stated the neck symptoms had worsened, without explaining why she felt the condition was causally related to the employment incidents in 1998 and 1999. That, appellant was working with a preexisting arthritis at that time does not explain how reported neck or back symptoms in 2008 are employment related. Dr. Dramov does not provide a rationalized medical opinion establishing an additional employment-related condition with continuing residuals or disability.⁸ The Board finds appellant did not meet her burden of proof regarding additional diagnosed conditions.

⁷ See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ Appellant submitted additional medical evidence after the March 21, 2008

CONCLUSION

The Office met its burden of proof to terminate compensation for wage-loss and medical benefits for the accepted employment injuries as of March 21, 2008. Appellant did not meet her burden of proof to establish additional employment-related conditions or disability.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 21, 2008 is affirmed.

Issued: March 6, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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