



wages as a photofinishing laboratory worker.<sup>1</sup> The Office had accepted that on September 6, 2003 appellant, then a 33-year-old transportation security screener, sustained a lumbosacral sprain/strain due to lifting bags at x-ray machines. The Board found that the Office had not shown that appellant could perform the duties of the constructed position of photofinishing laboratory worker given the work restrictions contained in the February 25, 2005 report of Dr. Roger V. Meyer, a Board-certified orthopedic surgeon, who served as an impartial medical specialist. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

In July 10, August 7 and September 13, 2006 reports, Dr. John P. Moore, III, an attending Board-certified family practitioner, stated that appellant primarily reported fatigue, restricted flexibility and stabbing and shooting pain in her right medial calf. Appellant also complained of "back injuries, back pain and joint pain." In a November 14, 2006 referral slip, Dr. Mark Rorrer, an attending osteopath, noted that appellant had a history of chronic low back pain.

In early May 2007 the Office referred appellant and the case record to Dr. Pietro Seni, a Board-certified orthopedic surgeon, for evaluation of whether she continued to have residuals of her September 6, 2003 employment injury.

On May 30, 2007 Dr. Seni detailed appellant's factual and medical history including the circumstances of her September 6, 2003 employment injury. He also provided an extensive discussion of the medical reports detailing the treatment of her back problems. Dr. Seni noted that multiple magnetic resonance imaging (MRI) tests were practically within normal limits. He indicated that the physical examination revealed that appellant did not have any abnormal back curvature and that the iliac crests and shoulders were even. The paravertebral muscles of the L5 spine are tight, there were several trigger points (including both sacroiliac joints) and range of motion of the back was painful. There were no sensory changes upon pinwheel examination and no muscle weakness upon manual muscle testing, including the extensor hallucis longus. Straight leg raising and Lasegue's sign testing were negative and range of motion of the hip joints was normal but painful.

Dr. Seni noted that Dr. Aivars Vitols, an attending osteopath, felt that appellant's complaints were related mainly to sacroiliac joint pathology. He indicated that appellant's most likely diagnosis was axial spondylarthritis which was not related to the September 6, 2003 employment injury.<sup>2</sup> Dr. Seni stated that there were no objective findings to show that the work-related lumbosacral sprain/strain was still active and causing symptoms. Appellant might have had a temporary aggravation of an underlying condition but she no longer had any residuals of her September 6, 2003 injury. Dr. Seni recommended work restrictions, including lifting no more than 30 pounds, but stated that they were required by the nonwork-related axial spondylarthritis rather than the September 6, 2003 injury.<sup>3</sup>

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<sup>1</sup> Docket No. 07-103 (issued May 2, 2007).

<sup>2</sup> Dr. Seni noted that appellant's primary complaints, including stiffness and joint pain, supported this diagnosis.

<sup>3</sup> Dr. Seni completed a work restriction form.

On July 3, 2007 the Office requested that Dr. Vitols provide an opinion regarding whether appellant continued to have residuals of her September 6, 2003 employment injury. It does not appear that Dr. Vitols responded to this request.<sup>4</sup>

In a July 12, 2007 note, Dr. Lance Tigyer, an attending osteopath, stated that appellant complained primarily of low back pain with some thigh pain. He indicated that he reviewed the MRI scan results which did not show any spinal stenosis or disc herniations.<sup>5</sup>

In a September 10, 2007 letter, the Office advised appellant that it proposed to terminate her compensation on the grounds that she no longer had residuals of her September 6, 2003 employment injury. It indicated that the weight of the medical evidence regarding whether she continued to have employment-related residuals rested with the opinion of Dr. Seni. The Office advised appellant that she had 30 days from the date of the letter to submit evidence and argument contesting the proposed termination.<sup>6</sup>

In an October 23, 2007 decision, the Office terminated appellant's compensation effective October 27, 2007 on the grounds that she had no residuals of her September 6, 2003 employment injury after that date. It indicated that the termination was justified by the opinion of Dr. Seni.

Appellant requested a hearing before an Office hearing representative. At the February 20, 2008 hearing, she asserted that she continued to have disabling residuals of her September 6, 2003 employment injury. In an April 22, 2008 decision, the Office hearing representative affirmed the Office's October 23, 2007 decision.

### **LEGAL PRECEDENT**

Under the Federal Employees' Compensation Act,<sup>7</sup> once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>8</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>9</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>10</sup>

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<sup>4</sup> There is no indication in the record that Dr. Vitols treated appellant around the time of Dr. Seni's evaluation.

<sup>5</sup> The record contains May 22, 2007 MRI scan test findings that are normal.

<sup>6</sup> Appellant did not submit any new medical evidence within the allotted time.

<sup>7</sup> 5 U.S.C. §§ 8101-8193.

<sup>8</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>9</sup> *Id.*

<sup>10</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

## ANALYSIS

The Office had accepted that on September 6, 2003 appellant sustained a lumbosacral sprain/strain due to lifting bags at x-ray machines. It terminated appellant's compensation effective October 27, 2007 on the grounds that she had no residuals of her September 6, 2003 employment injury after that date. The Office indicated that the weight of the medical evidence regarding whether she continued to have employment-related residuals rested with the opinion of Dr. Seni, a Board-certified orthopedic surgeon, who served as an Office referral physician.

On May 30, 2007 Dr. Seni detailed appellant's factual and medical history including the circumstances of her September 6, 2003 employment injury. He noted that multiple MRI scan tests were practically within normal limits and indicated that the physical examination revealed that appellant did not have any abnormal back curvature and that the iliac crests and shoulders were even. The paravertebral muscles of the L5 spine are tight, there were several trigger points (including both sacroiliac joints) and range of motion of the back was painful. There were no sensory changes upon pinwheel examination and no muscle weakness upon manual muscle testing, including the extensor hallucis longus. Straight leg raising and Lasegue's sign testing were negative and range of motion of the hip joints was normal but painful. Dr. Seni concluded that appellant did not have any residuals of the September 6, 2003 employment injury, a lumbosacral sprain/strain.

The Board has carefully reviewed the opinion of Dr. Seni and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Seni's opinion was based on a proper factual and medical history and he accurately summarized the relevant medical evidence.<sup>11</sup> He provided medical rationale for his opinion by explaining that there were no objective findings, on examination or diagnostic testing, to show that the work-related lumbosacral sprain/strain was still active and causing symptoms. Appellant might have had a temporary aggravation of an underlying condition but she no longer had any residuals of her September 6, 2003 injury. Dr. Seni further explained that appellant's symptoms and findings showed that her continuing problems were caused by a nonwork-related condition which most likely was axial spondylarthritis. He recommended work restrictions, including lifting no more than 30 pounds, but stated that they were required by the nonwork-related axial spondylarthritis rather than the September 6, 2003 injury.<sup>12</sup>

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<sup>11</sup> See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

<sup>12</sup> In a July 12, 2007 note, Dr. Tigyer, an attending osteopath, stated that appellant complained primarily of low back pain with some thigh pain. He indicated that he reviewed MRI scan results which did not show any spinal stenosis or disc herniations. This report is of limited probative value on the relevant issue of the present case because Dr. Tigyer did not provide any opinion regarding whether appellant continued to have residuals of her September 6, 2003 employment injury. See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship). The record does not contain any other medical evidence from around the time of Dr. Seni's evaluation.

**CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective October 27, 2007 on the grounds that she had no residuals of her September 6, 2003 employment injury after that date.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' April 22, 2008 and October 23, 2007 decisions are affirmed.

Issued: March 10, 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