

accepted the claim for multiple open wounds of the left leg without complications; multiple bilateral open arm wounds; and lumbar intervertebral disc displacement and lumbar sprain. By letter dated February 2, 2007, it placed appellant on the periodic rolls for temporary total disability.

In reports dated March 1 to April 12, 2007, Dr. Deepika Bajaj, a treating physician, diagnosed post-traumatic anxiety syndrome, right thumb contusion, multiple contusions and lumbosacral radiculopathy, lumbosacral disc herniations. He found that appellant was totally disabled due to his employment injuries.

On March 26, 2007 the Office referred appellant for a second opinion evaluation to Dr. Robert Israel, a Board-certified orthopedic surgeon, to determine his work capability and whether he had residuals from his accepted employment injuries. In an April 13, 2007 report, Dr. Israel opined that appellant had no disability or residuals as a result of the October 14, 2006 employment injury. He reported that physical examination was within normal limits. In an attached work capacity evaluation form (OWCP-5c), Dr. Israel advised that appellant had no restrictions and was capable of performing his usual job.

The Office found a conflict in the medical opinion between Dr. Bajaj and Dr. Israel on the issue of appellant's work capability and residuals due to his accepted employment injuries. It referred appellant to Dr. Stanley Soren, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

On August 30, 2007 Dr. Soren reviewed a history of appellant's October 14, 2006 employment injuries, statement of accepted facts and medical treatment. On physical examination, he reported essentially normal findings for the back, arms and legs with a lidocaine patch in the midlumbar area. Dr. Soren reviewed magnetic resonance imaging (MRI) scan results, which demonstrated an L3-4 disc herniation "with mild canal stenosis also seen at L4-5 disc space." He stated that appellant's left leg, right knee and upper extremity lacerations had healed and the lumbosacral strain had resolved "with no significant clinical findings on examination and none relating to radiculopathy." Dr. Soren opined that appellant was capable of performing his usual work duties.

In a supplemental report dated December 17, 2007, Dr. Soren addressed the disc herniation at L3-4, as seen on a March 30, 2007 MRI scan and an L5-S1 disc herniation as seen on a November 7, 2006 computerized tomography (CT) scan. He concluded that there were no significant positive clinical findings and that the disc herniations were considered static and clinically resolved.

On February 10, 2008 Dr. Soren related that the November 7, 2006 CT scan and March 30, 2007 MRI scan showed L4-5 and L5-S1 disc herniations. However, he concluded that it was "not possible to clearly state that those MRI [scan] findings either preceded or postdated the injury." Dr. Soren noted that the findings on the CT scan indicated that the herniation predated the October 14, 2006 employment injury. He concluded that appellant's condition had resolved in the absence of lower extremity orthopedic neurological and low back findings from his August 30, 2007 physical examination. Dr. Soren also opined that the disc herniations "were not clearly related to the work injury of October 14, 2006" although the injury could have

temporarily aggravated the disc herniations. In any event, he opined that appellant “had fully recovered clinically” at the time of his examination of appellant on August 30, 2007 since he found “no disability relating to the low back.”

By letter dated February 25, 2008, the Office issued a notice of proposed termination of appellant’s compensation benefits based on Dr. Soren’s medical opinion. Appellant did not respond.

In a decision dated March 27, 2008, the Office terminated appellant’s compensation benefits effective April 12, 2008.

In a June 5, 2008 letter, appellant, through his attorney, requested reconsideration and submitted arguments in support of his request.

In a May 6, 2008 report, Dr. Bajaj reviewed Dr. Israel’s report and a March 30, 2007 MRI scan. He noted that appellant continued to be symptomatic with lower back pain radiating into the right leg, which was accompanied by muscle spasms and a decreased range of motion. Dr. Bajaj opined that appellant sustained permanent injuries as a result of the October 14, 2006 employment injury due to the persistence of symptoms to date. He treated appellant on August 16 and September 13, 2007, which was around the time of Dr. Soren’s examination and that on physical examination appellant revealed muscle spasm and restricted range of motion. Dr. Bajaj concluded that appellant’s falling backward on October 14, 2006 caused his herniated disc and lower back injury. He noted that these injuries were documented by an MRI scan and that appellant had no symptoms prior to his October 14, 2006 employment injury. Dr. Bajaj opined that appellant was totally disabled from performing his usual employment duties.

By decision dated September 2, 2008, the Office denied modification of the March 27, 2008 decision. It accorded special weight to Dr. Soren’s impartial medical opinion in finding that appellant no longer had any continuing residuals or disability causally related to the October 14, 2006 employment injuries.

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 her 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 The Office’s 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. To terminate authorization for medical treatment, the Office must

¹ *Paul L. Stewart*, 54 ECAB 824 (2003).

² *Elsie L. Price*, 54 ECAB 734 (2003).

³ *See Del K. Rykert*, 40 ECAB 284 (1988).

establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁴

Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary of Labor shall appoint a third physician who shall make an examination."⁵ Where 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.⁶

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for multiple open left leg wounds, multiple bilateral open arm wounds, lumbar intervertebral disc displacement and lumbar sprain. It placed him on the periodic rolls. The Office has the burden of justifying the termination of appellant's compensation for these medical conditions.

The Office found a conflict in medical evidence between appellant's treating physician, Dr. Bajaj, and Dr. Israel, the second opinion physician. It referred appellant to an impartial medical specialist, Dr. Soren, a Board-certified orthopedic surgeon. In reports dated August 30 and December 17, 2007 and February 10, 2008, Dr. Soren advised that appellant's accepted conditions had resolved and that he had the capacity to return to his usual duties as a letter carrier without any physical restrictions. He found no clinical evidence of any continuing lower back conditions or radiculopathy and advised that the disc herniations had resolved. A physical examination revealed essentially normal findings for the arms, back and legs. The Office properly relied on Dr. Soren's opinion in its March 27, 2008 decision, which found that appellant had no residuals or continuing disability stemming from his October 14, 2006 work injury and was therefore not entitled to compensation or medical benefits.

The Board finds that Dr. Soren's impartial medical opinion establishes that appellant's accepted conditions resolved without continuing disability or any residuals from his accepted October 14, 2006 employment injury. Dr. Soren's opinion is sufficiently probative, rationalized and based upon a proper factual background. Therefore, the Office properly accorded his opinion as the special weight of an impartial medical examiner.⁷

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective April 12, 2008.

⁴ *James F. Weikel*, 54 ECAB 660 (2003).

⁵ 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁶ *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

⁷ *Darlene R. Kennedy*, 57 ECAB 414 (2006).

On appeal, appellant's attorney contends that the Office should have expanded the acceptance of appellant's claim to include herniated discs at L4-5 and L5-S1. He also contends that Dr. Soren's report is equivocal on this matter or there is an unresolved conflict between Dr. Soren and Dr. Bajaj on this issue. For conditions not accepted by the Office as being employment related, it is appellant's burden to provide rationalized medical evidence sufficient to establish causal relation.⁸ Dr. Bajaj diagnosed herniated discs at L4-5 and L5-S1 in his various reports. However, he provided no rationale explaining how these conditions were caused or aggravated by appellant's employment injury. The Board has held that medical reports unsupported by medical rationale are of limited probative value.⁹ Similarly, Dr. Soren's opinion is also insufficient to support appellant's claim that he sustained disc herniations at L4-5 and L5-S1 due to his accepted October 14, 2006 employment injury. He concluded that there was no hard objective findings to support a finding that appellant's October 14, 2006 caused or aggravated his herniated discs at L4-5 and L5-S1. The report of the impartial medical specialist does not support appellant's assertion that his herniated discs at L4-5 and L5-S1 are employment related.

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.¹⁰ 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.¹¹ 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.¹²

⁸ *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁹ *T.F.*, 58 ECAB ____ (Docket No. 06-1186, issued October 19, 2006).

¹⁰ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

¹¹ *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹² *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS -- ISSUE 2

After the Office properly terminated appellant's compensation on March 27, 2008, the burden of proof shifted to appellant to establish continuing employment-related disability.¹³ Appellant submitted a May 6, 2008 report by Dr. Bajaj, who noted his disagreement with the reports of Drs. Israel and Soren. Dr. Bajaj opined that appellant continued to have disability and residuals from the accepted back conditions. The Board notes that Dr. Bajaj was on one side of the conflict which was resolved by Dr. Soren. His May 6, 2008 report is essentially duplicative of his prior reports which also advised that appellant continued to have residuals from the accepted conditions. Dr. Bajaj's most recent report is insufficient to give rise to a new conflict or otherwise show that the termination was improper.¹⁴ Accordingly, the Board finds that Dr. Soren's opinion constituted the special weight of medical opinion, supports the Office's March 27, 2008 decision to terminate appellant's compensation and deny any entitlement to continuing disability based on the accepted conditions of multiple open left leg wounds; multiple bilateral open arm wounds, lumbar intervertebral disc displacement and lumbar sprain.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation benefits effective April 12, 2008. The Board also finds that appellant has failed to establish that he had any employment-related residuals or disability after April 12, 2008.

¹³ *Joseph A. Brown, Jr., supra* note 10.

¹⁴ *M.S.*, 58 ECAB ____ (Docket No. 06-797, issued January 31, 2007).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 2 and March 27, 2008 are affirmed.

Issued: March 20, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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