

**United States Department of Labor
Employees' Compensation Appeals Board**

M.C., Appellant

and

**SOCIAL SECURITY ADMINISTRATION,
Richmond, CA, Employer**

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**Docket No. 09-303
Issued: September 9, 2009**

Appearances:
Hank Royal, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 12, 2008 appellant filed a timely appeal from a February 12, 2008 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits on September 25, 2007 on the grounds that she had no residuals of her accepted injuries.

On appeal appellant, through her representative, contends that the weight of the medical evidence given to the second opinion examiner is incorrect.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated March 5, 2008, the Board affirmed a February 3, 2007 Office decision finding that appellant did not meet her burden of proof to establish that she was totally disabled from July 11 through 29 or August 21 through

September 20, 2005 causally related to her accepted employment injuries.¹ The law and the facts of the previous Board decision are incorporated herein by reference.

In March 2007, the Office referred appellant to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a March 23, 2007 report, Dr. Swartz noted his review of the statement of accepted facts and medical record including magnetic resonance imaging (MRI) scan and x-rays of the cervical and lumbar spines, the history of injury and appellant's complaints of neck, shoulder, arm and radiating low back pain and numbness. He provided findings on physical examination and diagnosed chronic degenerative arthritis in the cervical and lumbar spine at multiple levels, chronic tendinosis of the left shoulder and evidence of C6 radiculopathy. Dr. Swartz advised that appellant had no residuals of the April 19, 2005 work injury, as the MRI scans revealed any changes other than chronic degenerative disease and that she had no objective findings on his examination.² He concluded that appellant reached maximum medical improvement in regard to the employment injury within a reasonable period of time, that there was no need for further medical treatment referable to the April 19, 2005 injury and that no surgery was required to address the injury. Dr. Swartz reported that appellant was chronically depressed. In an attached work capacity evaluation, he advised that appellant could perform her regular job duties for eight hours a day with restrictions of five hours standing, twisting, bending and stooping, four hours operating a motor vehicle, three hours walking and one hour squatting, kneeling and climbing. Lifting was restricted to 10 to 20 pounds.

In a March 22, 2007 report, Dr. Alisha A. Wren, Board-certified in emergency medicine, advised that appellant had chronic pain to the neck, back and legs and lumbar disc herniation, beginning on April 19, 2005. Appellant could work modified duty March 15 to 22, 2007, and was totally disabled from March 22 to April 22, 2007 and would need physical therapy for pain control and gait training. In an April 12, 2007 form report, Dr. Wren noted her complaints of pain and examination findings of neck and back tenderness. She diagnosed cervical, lumbosacral and shoulder sprain/strain, and advised that appellant should remain off work until May 16, 2007.

On May 9, 2007 appellant was indicted in the U.S. District Court for the Northern District of California for committing mail fraud by devising a scheme to illegally receive funds from the Department of Housing and Urban Development (HUD). She was terminated from employment due to defrauding HUD. Dr. A. Wren and Dr. David Wren, an orthopedic surgeon, submitted reports providing the same diagnoses and complaints of continued pain.

On August 16, 2007 the Office proposed to terminate appellant's compensation benefits on the grounds that the medical evidence, as represented by Dr. Swartz's report, established that she no longer had any disability or residuals due to the accepted conditions.

¹ Docket No. 07-2117 (issued March 5, 2008). On April 19, 2005 appellant, a technical support system person, sustained employment-related neck lumbar and left shoulder sprains when she slipped and fell at work. Her job duties were to take telephone calls and enter data into a computer.

² Dr. Swartz noted that appellant had stocking hypesthesias in both upper extremities, stating that she could not feel a sharp pin in both hands and arms, and opined that this was a red flag for symptom magnification and a sign of an anxiety and depressive disorder and chronic pain syndrome.

In an August 20, 2007 report, Dr. Helena Edith Weil, Ph.D, a licensed clinical psychologist, described the April 19, 2005 injury and noted appellant's complaints of numbness and tingling, wobbliness in the legs, inability to relax and focus, a racing heart rate and high levels of nervousness, fearfulness and insomnia. She performed a mental status examination and psychological testing and diagnosed anxiety disorder, depressive disorder, psychological factors affecting a medical condition, panic disorder with agoraphobia, neck, lumbosacral and shoulder sprains, lumbar and cervical disc degeneration, rotator cuff syndrome and brachial neuritis. Dr. Weil advised that stressors included the 2005 employment injury, financial difficulties, decreased social and occupational functioning, fears of the future and uncertainty concerning appellant's job situation. She concluded that appellant had a psychological overlay of her chronic pain conditions and that her depression and anxiety were related to the employment injury. In a September 10, 2007 report, Dr. David Wren noted that appellant was very stressed, anxious, depressed and tearful. He additionally diagnosed anxiety and depression and advised that appellant must continue psychotherapy and should be off work pending clearance by her treating psychologist and psychiatrist.

On September 16, 2007 appellant, through her representative, disagreed with the proposed termination, arguing that the statement of accepted facts provided to Dr. Swartz did not include all accepted conditions. Therefore, Dr. Swartz' report was insufficient to establish that appellant no longer had residuals of the April 19, 2005 employment injury.

By decision dated September 25, 2007, the Office finalized the termination, effective that day. On October 20, 2007 appellant requested a review of the written record. In a February 11, 2008 decision, an Office hearing representative affirmed the September 25, 2007 decision.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

ANALYSIS

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits on September 25, 2007. The medical evidence relevant to the Office's termination includes a number of form reports from attending physicians Drs. Alisha and David Wren. They diagnosed cervical, lumbar and shoulder strains, the accepted conditions and reported appellant's complaints of continuing pain. Dr. David Wren added the diagnoses of depression and anxiety on September 10, 2007. While he advised that appellant should remain off work until cleared by her treating psychologist, the Board notes that the Office did not accept

³ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁴ *Id.*

an emotional condition or a pain condition as employment related.⁵ 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 the claimant's diagnosed condition and the implicated employment factor. The opinion of a physician must be based on a complete factual and medical background of the claimant, 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 factor identified by the claimant.⁶ Neither Dr. Alisha nor Dr. David Wren provided a rationalized explanation as to why the accepted conditions caused appellant's continuing symptoms, and a medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.⁷

While Dr. Weil provided an August 20, 2007 report advising that appellant's diagnoses of depression and anxiety were related to the employment injury, she did not report a history that appellant had been indicted in federal court and terminated for cause by the employing establishment. Medical conclusions based on an incomplete factual history are of diminished probative value.⁸

The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁹ The Board disagrees with appellant's representative and finds that the weight of the medical evidence rests with the March 23, 2007 second opinion by Dr. Swartz, who provided a comprehensive evaluation based on his review of the statement of accepted facts and medical record including MRI scans and x-rays of the cervical and lumbar spines, the history of injury and appellant's complaints of continued pain. Dr. Swartz advised that the MRI scans revealed no changes other than chronic degenerative disease, that appellant had no objective findings on his physical examination and concluded that there was no need for further treatment referable to the April 19, 2005 injury. In an attached work capacity evaluation, he advised that appellant could work eight hours a day with restrictions to her physical activity. Dr. Swartz advised that appellant did not have residuals from her accepted conditions and, while he provided some physical restrictions, he advised that she could perform her usual job duties.¹⁰ There is no reasoned contemporaneous medical evidence supporting appellant's claim for continuing disability and residuals. Thus, the Office properly found that appellant had no

⁵ The Board notes that the August 16, 2007 notice of proposed termination listed incorrect accepted conditions, stating that neck, lumbosacral and left shoulder sprain, degeneration of cervical intervertebral disc, degeneration of lumbar or lumbosacral intervertebral disc, left rotator cuff syndrome and brachial neuritis or radiculitis, not otherwise specified, were accepted conditions. The record, however, provides that only cervical and lumbar sprains and left shoulder sprains were accepted as employment related. Appellant had additional closed claims for bilateral carpal tunnel and left wrist strain, low back strain, right arm strain and a hot water spill.

⁶ *Sedi L. Graham*, 57 ECAB 494 (2006).

⁷ *T.F.*, 58 ECAB ____ (Docket No. 06-1186, issued October 19, 2006).

⁸ *M.W.*, 57 ECAB 710 (2006).

⁹ *C.B.*, 60 ECAB ____ (Docket No. 08-1583, issued December 9, 2008).

¹⁰ *Supra* note 1.

disability or residuals due to the accepted injuries and terminated her compensation benefits on September 25, 2007.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation on September 25, 2007.

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2008 decision Office of Workers' Compensation Programs be affirmed.

Issued: September 9, 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