

duty for four hours a day on June 1, 2000 and her wage-loss compensation was reduced. Appellant was removed by the employing establishment effective October 23, 2000 due to her physical inability to perform the duties of her position. She was returned to the periodic rolls in receipt of compensation for total disability. Dr. Duane Kirkdorffer, a Board-certified osteopath specializing in occupational medicine, submitted reports as to appellant's condition and treatment.

On December 4, 2004 appellant began private employment as a housekeeper for 20 hours a week. On December 13, 2004 the Office referred her to Dr. John P. Sandifer, Board-certified in orthopedic surgery, for a second opinion evaluation. In a January 19, 2005 report, Dr. Sandifer provided findings on examination and diagnosed chronic lumbar strain with probable radiculopathy affecting the left leg; chronic cervical strain with left arm pain; elbow strain/contusion, resolved and strain of the left shoulder with chronic tendinitis. He advised that the accepted conditions involving the lumbar and cervical spines, left shoulder and both sacroiliac joints were still active and had not resolved. Dr. Sandifer advised that appellant could work from four to six hours a day with permanent restrictions to her physical activity.

By decision dated February 28, 2005, the Office reduced appellant's compensation benefits based on her actual earnings in private employment. Appellant received compensation based on her loss of wage-earning capacity.

On August 13, 2007 Dr. Kirkdorffer advised that appellant continued to have objective findings of the November 30, 1999 employment injury, including tenderness at C5-7, the left shoulder, the lumbar spine, sacroiliac joints and both hips with decreased range of motion of the cervical and lumbar spines. He advised that her condition had been the same for the last three to four years. Appellant was unable to return to her previous employment but could continue working modified duty for 20 hours weekly.

In January 2008, the Office referred appellant to Dr. Robert E. Holladay IV, a Board-certified orthopedic surgeon, for a second opinion evaluation. By report dated January 28, 2008, Dr. Holladay noted appellant's complaint of cervical, shoulder, and hip and low back pain and left hand weakness. He provided findings on physical examination and addressed the accepted conditions. In answer to specific Office questions, Dr. Holladay advised that the accepted conditions should have long-since resolved, noting the absence of objective findings. Appellant could work four hours a day with restrictions to her physical activity. On July 18, 2008 the Office requested that Dr. Kirkdorffer review Dr. Holladay's report and provide comments.

The Office determined that a conflict in medical opinion arose between Dr. Kirkdorffer and Dr. Holladay regarding whether appellant's injury-related conditions had resolved. On September 2, 2008 it referred her to Dr. Christopher Cenac, Sr., a Board-certified orthopedic surgeon, for an impartial evaluation. In a September 28, 2008 report, Dr. Cenac reviewed the medical record and statement of accepted facts. He noted appellant's complaints of neck pain, left shoulder discomfort, occasional numbness and tingling in her fingers of the left hand, low back pain with numbness in her legs, and occasional pain in the left elbow with lifting. Appellant advised that she was 5 feet 2 inches tall and weighed 193 pounds. Grip strength testing was symmetrical with the dynamometer, and reflex testing was normal in the arms and legs, with no definitive sensory deficit in the upper extremities. Appellant indicated sensory

deficits to pinprick and light touch of the L5 distribution of the right foot. Long toe extensor strength was 5/5 and equal bilaterally, and her straight leg raise examination was negative for nerve root irritation bilaterally at 90 degrees. Shoulder strength was symmetrical at 5/5, and there was no atrophy identified in the upper or lower extremities. Appellant was able to heel and toe walk without difficulty. Dr. Cenac reported that muscle spasm was not documented in the neck, and that appellant's size prevented a valid evaluation for muscle spasm in the low back. Palpation of the spine revealed nonphysiologic responses, and examination of the left shoulder revealed full passive motion in external and internal rotation and abduction and adduction. Left shoulder x-ray examination was unremarkable, and x-rays of the cervical and lumbar spines demonstrated degenerative changes with loss of disc space height at L4-5 and what appeared to be a degenerative spondylolisthesis at L5-S1.

Dr. Cenac advised that appellant had long since reached maximum medical improvement for the accepted conditions of cervical sprain, contusion of the left elbow, contusion of back, contusion of left shoulder and bilateral contusions of the hips. He noted that the moderate degenerative disease in the cervical and lumbosacral spines would continue to be aggravated by her excess weight; but her present condition and symptoms were not work related and attributable to the degenerative changes in her cervical and lumbosacral spines. Dr. Cenac agreed with Dr. Holladay's opinion that appellant's injury-related conditions had resolved and that she could return to work at the sedentary to light level of physical activity. He stated that the recommendation for limited activity was due to the underlying degenerative disease which would have developed in the absence of the work injury and was expected to progress as she aged. Dr. Cenac provided a work capacity evaluation in which he advised that appellant could work four hours a day with permanent restrictions of sitting, walking, standing, reaching, twisting, bending, pushing, pulling and lifting limited to four hours daily with a 10-pound weight restriction.

On December 11, 2008 the Office proposed to terminate appellant's compensation benefits on the grounds that the medical evidence, as represented by Dr. Cenac's impartial medical opinion, established that her accepted conditions had resolved without any residual disability.

Appellant disagreed with the proposed termination, stating that she continued to have severe pain in her hips, buttocks and down both legs. She contended that neither Dr. Holladay nor Dr. Cenac conducted a thorough examination. In an August 13, 2007 duty status report, Dr. Kirkdorffer provided restrictions to her physical activity. In an October 23, 2007 letter, he reviewed Dr. Sandifer's January 10, 2005 report and agreed with his impressions and recommendations. In subsequent undated letters, Dr. Kirkdorffer advised that he disagreed with both Dr. Holladay and Dr. Cenac and reiterated his opinion that the residuals of appellant's work injury had not ceased. Appellant continued to have limitations to her physical activity and the degenerative changes were due to the November 29, 1999 employment injury.

By decision dated January 13, 2009, the Office terminated appellant's compensation, finding the report of Dr. Cenac represented the weight of medical opinion.

On January 20, 2009 appellant, through her attorney, requested a hearing that was held on June 15, 2009. At the hearing, counsel argued that appellant had traumatic degenerative changes

that were caused by the November 29, 1999 employment injury. Appellant described her date-of-injury job, and noted that she could no longer perform the job duties of her position due to her physical limitations. She described her current part-time work as a housekeeper and resubmitted the letters of Dr. Kirkdorffer previously of record.

In a September 15, 2009 decision, an Office hearing representative affirmed the January 13, 2009 decision, finding the impartial report of Dr. Cenac the weight of medical opinion.

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. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.¹ 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.²

The Board has held that once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was, in fact, erroneous.³ The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.⁴ In certain situations, if the medical evidence is sufficient to meet the Office's burden of proof to terminate benefits, this evidence may negate a loss of wage-earning capacity such that a separate evaluation of the prior determination is unnecessary.⁵ The Office's burden to demonstrate no further disability is effectively the same, irrespective of whether there is an existing loss of earning capacity determination.⁶

Section 8123(a) of the Federal Employees' Compensation Act⁷ 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.⁸ When the case is referred to an impartial medical specialist for the purpose of

¹ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

² *Id.*

³ *Stanley B. Plotkin*, 51 ECAB 700 (2000).

⁴ *Id.*

⁵ *A.P.*, 60 ECAB ____ (Docket No. 08-1822, issued August 5, 2009). There may exist a situation where a separate analysis would be necessary, based on preexisting conditions or other medical conditions, but that situation does not present itself in this case. Should those particular facts arise, this decision does not preclude a further consideration of the matter. *Id.*

⁶ *A.P., id.*

⁷ 5 U.S.C. §§ 8101-8193.

⁸ 5 U.S.C. § 8123(a); see *Geraldine Foster*, 54 ECAB 435 (2003).

resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁹

ANALYSIS

Appellant's claim was accepted by the Office for contusions of the left shoulder and elbow, lumbar spine, hips and a cervical strain. On December 4, 2004 she commenced work in the private sector. A loss of wage-earning capacity determination was made on February 28, 2005.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits on June 13, 2009.

The Office determined that a conflict in medical opinion arose between appellant's treating physician, Dr. Kirkdorffer, and Dr. Holladay, an Office referral physician, regarding whether her injury-related conditions had resolved. It properly referred her to Dr. Cenac, Board-certified in orthopedic surgery, for an impartial evaluation. In a September 28, 2008 report, Dr. Cenac reviewed the statement of accepted facts, the medical record and appellant's complaints. On physical examination, there were no objective findings to support that she had continuing residuals of the conditions accepted in this case. Dr. Cenac diagnosed degenerative disease of the cervical and lumbar spine, but found that this condition was not caused by the accepted employment injury. He recommended restrictions to appellant's physical activity due to the underlying degenerative disease process and not to the accepted conditions. Dr. Cenac noted that she had degenerative changes at C5 and C6 with loss of disc space and spondylolisthesis at L4 on L5 that caused her present symptoms. He suspected some symptom magnification based on the score of her pain questionnaire.

The Board finds that, as Dr. Cenac provided a comprehensive, well-rationalized opinion in which he found that the residuals of appellant's accepted contusions had resolved. Dr. Cenac's opinion is entitled to the special weight accorded an impartial examiner and constitutes the weight of the medical evidence.¹⁰ The Board finds that the medical evidence appellant subsequently submitted is insufficient to overcome the weight accorded Dr. Cenac as an impartial medical specialist. Dr. Kirkdorffer submitted several reports in which he reiterated his prior findings and conclusions. He stated that appellant's degenerative disease was caused by the employment injury and noted his disagreement with the opinions of both Dr. Holladay and Dr. Cenac. In general, reports from a physician who was on one side of a medical conflict that an impartial specialist resolved, are insufficient to overcome the weight accorded to the report of the impartial medical examiner, or to create a new conflict.¹¹ Dr. Kirkdorffer essentially reiterated his prior findings and conclusions. While he related appellant's degenerative disease to the November 29, 1999 employment injury this condition was not accepted by the Office as employment related. Dr. Cenac specifically advised that appellant's degenerative condition

⁹ *Manuel Gill*, 52 ECAB 282 (2001).

¹⁰ *See Sharyn D. Bannick*, 54 ECAB 537 (2003).

¹¹ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008).

would have developed irrespective of the employment injury and would progress as she aged. He noted that the disease process was aggravated by her excess weight.

Dr. Cenac provided a comprehensive, well-rationalized opinion. He advised that the residuals of appellant's accepted conditions had resolved. Dr. Cenac's opinion is entitled to the special weight accorded an impartial medical examiner.¹² The Board finds that Dr. Kirkdorffer's medical opinion is insufficient to overcome the weight accorded Dr. Cenac as an impartial medical specialist. The Office properly terminated appellant's compensation benefits.¹³

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits on the grounds that she had no residuals or disability due to her accepted conditions.

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 5, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹² See *Sharyn D. Bannick*, *supra* note 10.

¹³ *Manuel Gill*, *supra* note 9.