

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

I.R., Appellant	)	
	)	
and	)	<b>Docket No. 09-1229</b>
	)	<b>Issued: February 24, 2010</b>
U.S. POSTAL SERVICE, NEW YORK	)	
PRIORITY MAIL PROCESSING CENTER,	)	
Bethpage, NY, Employer	)	
	)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
Thomas S. Harkins, Esq., for the appellant	
Office of Solicitor, for the Director	

**DECISION AND ORDER**

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

**JURISDICTION**

On April 9, 2009 appellant through counsel filed a timely appeal from May 22, 2008 and January 12, 2009 decisions 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.

**ISSUES**

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective June 8, 2008 on the grounds that she had no residuals of the accepted low back strain; and (2) whether appellant established that she had any continuing employment-related disability or condition after that date due to her accepted condition.

On appeal, counsel for appellant contends that she had residuals of the employment injury at the time of termination and that the claim should be expanded to accept all conditions outlined in the medical evidence.

## **FACTUAL HISTORY**

On June 13, 2001 appellant, then a 35-year-old casual mail sorter, injured her low back while loading sacks and flats of mail. She stopped work that day and returned to modified duty on June 19, 2001. In a June 28, 2001 report, Dr. Rafael A. Rodriguez, an anesthesiologist practicing pain management, noted the history of injury and appellant's complaint of neck, and bilateral shoulder, arm, hip and thigh pain. Lumbar spine examination demonstrated tenderness and spasm with a negative straight-leg raising examination. Dr. Rodriguez diagnosed cervicalgia, rule-out disc herniation, lumbago, lumbosacral sprain, rule-out lumbar disc herniation, rule-out lumbar radiculopathy, right knee pain, and bilateral trochanteric bursitis. He advised that appellant's condition was causally related to "the events-accident that she sustained on June 13, 2001." Dr. Rodriguez recommended restrictions to her physical activity.

On September 18, 2001 the Office accepted that appellant sustained an employment-related low back sprain. Appellant sustained several recurrences of disability that were accepted by the Office. An October 26, 2001 magnetic resonance imaging (MRI) scan of the lumbosacral spine was limited due to an increase in image noise and demonstrated a large anterior extradural defect at L5-S1. On October 29, 2001 Dr. Rodriguez reviewed the MRI scan and diagnosed lumbago, lumbar disc herniation, lumbar spondylosis and lumbar radiculopathy. A December 7, 2001 computerized tomography (CT) scan of the lumbosacral spine showed posterior bulging discs at L2-3 and L3-4, Grade I spondylitis spondylolisthesis of L5 with respect to S1 and a large posterior herniated disc at this level deforming the anterior margin of the thecal sac with severe narrowing of both foramina, due to a combination of spondylolisthesis and facet osteoarthropathy. Appellant was released from employment by the employing establishment on December 31, 2001 when her noncareer appointment expired. Thereafter, Dr. Rodriguez advised that she was totally disabled.

On April 22, 2003 appellant filed a claim for compensation beginning on December 28, 2001.<sup>1</sup>

The Office referred appellant for examination to Dr. Lester Lieberman, a Board-certified orthopedic surgeon. In an April 29, 2003 report, Dr. Lieberman reviewed the history of injury and noted a prior history of a back injury when appellant worked at an airport. He also reviewed the statement of accepted facts and medical record. Dr. Lieberman noted appellant's complaint of pain in the neck, back, both shoulders and knees, right arm, hand, leg and foot. Examination of the lumbar spine demonstrated no muscle spasm or tenderness. Dr. Lieberman diagnosed obesity and degenerative disease of the cervical and lumbar spine.<sup>2</sup> He found that appellant was not totally disabled but could work full time with a four-pound lifting restriction. Dr. Lieberman concluded that her condition was related to her obesity.

On April 19, 2004 the Office found a conflict in medical opinion between Dr. Rodriguez and Dr. Lieberman regarding her residual disability and capacity for work. It referred her to Dr. Ronald Richman, Board-certified in orthopedic surgery, for an impartial evaluation. In an April 29, 2004 report, Dr. Richman reviewed a history of appellant's prior injury while working

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<sup>1</sup> On April 2, 2004 appellant was paid wage-loss compensation for the period January 1, 2002 to April 22, 2003.

<sup>2</sup> Appellant was described as 5 feet 10-1/2 inches tall and weighed 340 pounds.

at an airport and her accepted injury of June 13, 2001. He reviewed the medical evidence of record, including the MRI and CT scan studies and noted that appellant was markedly obese. Lumbar spine examination demonstrated a painful response on palpation of the sacral area and sacroiliac joints bilaterally. There was no spasm in the paravertebral musculature and examination of the shoulders revealed a full range of motion that was pain free. Neurological examination of the upper extremities was negative. Dr. Richman listed findings on range of lumbar motion, noting no muscle spasm or painful response with movement. Straight-leg raising test and lower extremity neurological examination were negative. Dr. Richman diagnosed lumbosacral sprain, noting that the findings on diagnostic study were not clinically significant. He also noted a minor fibromyositis of the left trapezius area. Dr. Richman advised that appellant was capable of returning to work with restrictions to protect the low back. He provided work restrictions for appellant.

On May 30, 2004 appellant filed a claim for compensation for the period commencing April 23, 2003. She received wage-loss compensation for the period April 23, 2003 to July 20, 2004 and was placed on the periodic rolls. Thereafter, Dr. Rodriguez submitted two OWCP-5 work capacity evaluations advising that appellant was permanently disabled for her lifetime. The forms were dated May 4 and December 22, 2006.

In May 2007, the Office referred appellant to Dr. Robert Israel, a Board-certified orthopedic surgeon, for an updated examination and opinion on disability. In a June 5, 2007 report, Dr. Israel reviewed the history of injury and the medical record, including the diagnostic studies, and statement of accepted facts. Appellant complained of pain to her neck, upper and lower back, both shoulders, hips, knees and legs. Lumbar spine examination findings included bilateral negative straight-leg raising, normal spine range of motion, no muscle spasms or tenderness, and no atrophy, radiation of pain, numbness or tingling. Dr. Israel diagnosed resolved sprain of the lumbar spine and advised that appellant had reached maximum medical improvement. He advised that appellant was capable of returning to full-time work as a mail sorter with no restrictions and required no further orthopedic treatment.

In a January 3, 2008 work capacity evaluation form, Dr. Rodriguez again advised that appellant was permanently disabled for her lifetime.<sup>3</sup>

On April 17, 2008 the Office proposed to terminate appellant's compensation benefits, finding that the weight of medical opinion was represented by the report of Dr. Israel. Appellant no longer had residuals or disability due to the June 13, 2001 employment injury and could return to her regular job. The Office noted that Dr. Rodriguez's form reports provided no new findings based on a recent examination.

Appellant, through her attorney, disagreed with the proposed termination. In an April 22, 2008 note, Dr. Rodriguez advised that appellant was under evaluation for spinal stenosis and degenerative disease of both knees. A May 13, 2008 note reiterated that appellant was undergoing evaluation and that an MRI scan showed an L5-S1 herniated disc causing spinal stenosis. Dr. Rodriguez stated appellant would be ready for surgery by mid-summer.

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<sup>3</sup> The form reports incorrectly state that the accepted conditions are lumbar radiculopathy with herniated discs and bilateral knee degenerative joint disease.

In a May 22, 2008 decision, the Office terminated appellant's compensation benefits effective June 8, 2008.

On November 1, 2008 appellant, through her attorney, requested reconsideration, contending that the Office failed to accept all conditions caused by the June 13, 2001 employment injury. She also argued that the weight of medical opinion was with the reports of Dr. Rodriguez. In the alternative, appellant argued that a conflict in medical opinion existed between Dr. Israel and Dr. Rodriguez. Appellant submitted a September 23, 2004 MRI scan of the lumbar spine that demonstrated a very large central disc herniation at L5-S1 generating extruded fragments and mild lower lumbar degenerative spinal stenosis. April 22, 2008 x-rays demonstrated degenerative joint disease and disc space disease of the lumbosacral spine, a negative pelvis/hips study, and degenerative joint disease of the knees, right worse than left. A June 3, 2008 MRI scan of the left knee demonstrated advanced chondromalacia patella. In a June 4, 2008 report, Dr. David L. Langer, a Board-certified neurosurgeon, noted that appellant was injured at work in June 2001, had not worked since December 2001 and underwent gastric bypass surgery and lost 175 pounds. He reported her complaint of refractory back pain, and advised that an April 29, 2008 MRI scan revealed lumbar discogenic disease at L5-S1 with a central disc herniation, no spondylolisthesis and a significant amount of degeneration and disc space collapse at L5-S1. Dr. Langer recommended surgery.

In a January 12, 2009 decision, the Office denied modification of the May 22, 2008 decision.

### **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. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>4</sup> 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.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits as of June 8, 2008. The accepted condition in this case is a low back sprain due to the June 13, 2001 employment injury while loading sacks of mail.

Appellant was treated by Dr. Rodriguez who diagnosed a lumbar disc herniation, spondylosis and radiculopathy which he attributed to the accepted injury. He advised that she was totally disabled. An October 26, 2001 MRI scan indicated a defect at L5-S1. A December 7, 2001 CT scan showed disc bulging at L2-3 and L3-4 and spondylolisthesis of L5-S1. She was subsequently examined by Dr. Lieberman who advised that appellant's lumbar examination was not remarkable for spasm or tenderness. He attributed the findings on diagnostic testing to degenerative disease which he attributed to appellant's obesity. Dr. Lieberman found that appellant could work full time with restrictions that were not related

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<sup>4</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>5</sup> *Id.*

to the accepted back sprain. Based on a conflict in medical opinion between Dr. Rodriguez and Dr. Lieberman, appellant was referred for an impartial examination by Dr. Richman on April 19, 2004.

On examination, Dr. Richman provided findings related to appellant's upper and lower extremities, noting that appellant denied any history of pain radiating into her extremities. He reviewed the diagnostic studies and noted that they were not clinically significant based on his examination. He found no spasm of the paravertebral musculature, noting pain only on palpation in the sacroiliac joints. Straight leg raising and neurological examination were reported as normal. Dr. Richman diagnosed a lumbar sprain related to the employment injury and advised that appellant was capable of returning to work with restrictions.

The record reflects that following the impartial examination, appellant remained in receipt of compensation for total disability. As noted, Dr. Rodriguez submitted two OWCP-5 forms indicating that appellant remained totally disabled for her lifetime. He did not submit any medical report providing any findings on examination of appellant's low back. To obtain an updated evaluation, appellant was referred by the Office to Dr. Israel in May 2007.

On June 5, 2007 Dr. Israel reviewed appellant's history of injury and medical treatment. He was provided a statement of accepted facts and addressed the medical evidence of record, including the diagnostic studies. Examination of the lumbar spine demonstrated bilateral negative straight-leg raising, normal spine range of motion, no spasms or tenderness, no atrophy, radiation of pain, numbness or tingling. Dr. Israel found that appellant's accepted lumbar sprain had resolved and that she had reached maximum medical improvement. He advised that appellant was capable of returning to regular full-time work as a mail sorter with no physical restrictions and required no further orthopedic treatment.

Appellant was notified that the Office found the weight of medical opinion represented by the report of Dr. Israel. She submitted several brief notes from Dr. Rodriguez. In a January 3, 2008 work capacity evaluation, Dr. Rodriguez reiterated that appellant was disabled for her lifetime with no further explanation. The notes of April 22 and May 13, 2008 reported that she was being evaluated for spinal stenosis and degenerative joint disease of both knees, again without further explanation. Dr. Rodriguez did not provide any narrative medical report based on a complete or thorough examination to support his opinion of continuing disability due to the accepted lumbar sprain.

Rationalized medical opinion evidence is medical evidence which includes a physician's opinion addressing the causal relationship between a claimant's diagnosed condition and the accepted employment injury. To be probative, the opinion of a physician must be based on a complete factual and medical background of the employee, 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 employment factor accepted in the case.<sup>6</sup> The evidence from Dr. Rodriguez contemporaneous with the June 6, 2008 termination is not rationalized medical opinion. He merely indicated that appellant was disabled for her lifetime. The Board notes that his subsequent notes indicated evaluation for lumbar radiculopathy and degenerative joint disease of the knees, neither of which were accepted as related to the June 13, 2001

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<sup>6</sup> *Sedi L. Graham*, 57 ECAB 494 (2006).

employment injury. There is no rationalized explanation from the physician as to how the accepted low back injury caused or contributed to appellant's continuing disability. At the time of her examinations by Dr. Richman and Dr. Israel, no findings of lumbar radiculopathy were made. Dr. Rodriguez did not address how appellant's degenerative disease of the knees would be related to the accepted injury to her low back in 2001. His notes are not sufficient to create a conflict in medical opinion with the findings of Dr. Israel.

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.<sup>7</sup> The Board finds that the weight of the medical evidence rests with the June 5, 2007 report of Dr. Israel. He provided a comprehensive evaluation based on his review of the statement of accepted facts and medical record, the history of injury, appellant's complaints of continued pain in multiple areas, and findings on physical examination. Dr. Israel advised that appellant had no residuals of her accepted lumbar strain and that there was no need for further treatment due to her June 13, 2001 employment injury. She was found capable of returning to her usual job of mail sorter without restriction. The Board finds that the Office properly terminated her compensation benefits effective June 8, 2008.

### **LEGAL PRECEDENT -- ISSUE 2**

As the Office met its burden of proof to terminate appellant's wage-loss compensation on February 24, 2003, the burden shifted to her to establish that she had any continuing disability causally related to her accepted right shoulder injury.<sup>8</sup> To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>9</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>10</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the 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 factors identified by the claimant.<sup>11</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant submitted insufficient medical evidence with her November 1, 2008 reconsideration request to establish that she continued to be disabled after June 8, 2008 due to the accepted low back strain. In a June 4, 2008 report, Dr. Langer noted that

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<sup>7</sup> *C.B.*, 60 ECAB \_\_\_\_ (Docket No. 08-1583, issued December 9, 2008).

<sup>8</sup> *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

<sup>9</sup> *Jennifer Atkerson*, 55 ECAB 317 (2004).

<sup>10</sup> *Id.*

<sup>11</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

appellant had been injured at work in June 2001. He reviewed MRI scan findings and recommended surgery. Dr. Langer did not provide any opinion regarding the cause of any ongoing medical condition or how it related to the accepted injury. He did not provide any opinion regarding her capacity for work. The diagnostic studies submitted on reconsideration provide no opinion on disability. The Board finds that appellant did not submit sufficient rationalized medical opinion to establish ongoing residuals or disability after June 8, 2008 due to her accepted injury.

**CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective June 8, 2008. Appellant failed to establish that she had any disability after June 8, 2008 causally related to her accepted low back strain.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated January 12, 2009 and May 22, 2008 be affirmed.

Issued: February 24, 2010  
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