

Appellant underwent a magnetic resonance imaging (MRI) scan on June 6, 2006 which was unremarkable. Dr. Alejandro Alam, an attending physician specializing in preventative medicine, noted on May 5, 2006 that appellant's lumbar strain was not resolving with physical therapy and limited duty. In a note dated June 8, 2006, Dr. Matthew Richardson, a physician specializing in preventative medicine, diagnosed lumbosacral strain and bilateral lower extremity dysesthesias.

On October 18, 2006 the Office referred appellant for a second opinion evaluation to Dr. Christopher Cenac, a Board-certified orthopedic surgeon. In a report dated November 6, 2006, Dr. Cenac reviewed appellant's history of injury and found no sensory deficits in either lower extremity. He found that appellant had normal range of motion with no muscle spasm or atrophy in the back. Dr. Cenac stated that appellant's lumbar x-rays were normal. He concluded that appellant had no objective evidence of any orthopedic mechanical dysfunction or neurological deficit causally related to the April 5, 2006 employment injury. Dr. Cenac stated that appellant could return to normal physical activities and that he had reached maximum medical improvement. He completed a work restriction evaluation and found that appellant could return to his date-of-injury position with no restrictions.

The Office entered appellant on the periodic rolls on December 22, 2006. It authorized his request to change treating physicians to Dr. Morteza Shamsnia, a Board-certified neurologist of professorial rank, and requested that Dr. Shamsnia respond to Dr. Cenac's findings.

On January 24, 2007 Dr. Shamsnia reported that appellant had normal muscle tone and strength in all extremities. He found no atrophy or tremors. Dr. Shamsnia advised that appellant had a normal sensory examination and reflexes. He noted spasm in the cervical and lumbosacral spine. Dr. Shamsnia diagnosed neck pain, low back pain and pain and paresthesias of the limbs. He recommended an MRI scan as well as electrodiagnostic testing. Appellant underwent a standing MRI scan on February 28, 2007 which demonstrated desiccation and decreased height of the L4-5 disc with posterior bulging. He also demonstrated Grade 1 anterolisthesis of L4 on L5 with the erect weight-bearing passive, neutral and flexion postures. On March 10, 2007 appellant underwent an electromyogram which demonstrated left S1 radiculopathy. In a note dated April 3, 2007, Dr. Shamsnia stated that appellant's testing revealed a right lumbosacral radiculopathy and left S1 radiculopathy with a bulging disc at L4-5 and involvement of the L4 nerve root. He recommended additional treatment.

The Office found a conflict in medical opinion between Dr. Shamsnia, for appellant, and Dr. Cenac, the second opinion physician.

The Office referred appellant for an impartial medical examination on June 12, 2007 with Dr. Gordon Nutik, a Board-certified orthopedic surgeon, to determine whether he continued to experience disability and residuals of his accepted employment injury. In a report dated June 27, 2007, Dr. Nutik described appellant's employment injury. He performed a physical examination and found pain with palpation at L4-5 as well as the paravertebral and gluteal muscles. Dr. Nutik found no muscle spasm, limited lateral bending and rotational movements and pain on straight leg raising. Appellant's neurological examination was normal and he demonstrated equal muscle power in the lower extremities with no atrophy. Dr. Nutik noted that appellant complained of pain during the examination at his left hip. He found that appellant's lumbosacral

x-rays did not demonstrate fractures. Dr. Nutik opined that appellant sustained a low back strain which resolved within three or four months. He requested to review the actual MRI scan films. Dr. Nutik noted that appellant's electromyogram (EMG) demonstrated left S1 radiculopathy, but stated that there was not clinical correlation to indicated left S1 nerve root involvement and recommended a repeat EMG. He stated that his clinical examination did not reveal any objective findings to indicate disability in the low back or left hip. Dr. Nutik advised that appellant demonstrated inconsistencies during the clinical examination as appellant's significant pain, sensory deficits and motor impairments were not documented by objective clinical findings. He opined that appellant's subjective complaints were not related to his April 5, 2006 employment injury.

In a supplemental report dated July 16, 2007, Dr. Nutik reviewed appellant's MRI scan films and found very minimal anterior listhesis of L4 and L5 in the forward flexion view. He noted a minimal bulge at L4-5 slightly more prominent towards the right. Dr. Nutik found no evidence for any root involvement. He opined that appellant's MRI scan was within normal limits with no evidence of disc herniations.

On August 1, 2007 Dr. Nutik responded to a request for a supplemental report. He opined that appellant had sustained a lumbar strain which resolved. He advised that appellant was capable of returning to his normal work. Dr. Nutik opined that additional treatment was not necessary and that there were no objective clinical findings to indicate disability.

The Office proposed to terminate appellant's compensation and medical benefits by letter dated August 13, 2007.

On August 29, 2007 appellant disagreed with the Office's proposed termination. He noted that the Office's physician and the impartial medical examiner were both orthopedic surgeons rather than neurologists. Appellant contended that he was partially disabled and unable to return to his date-of-injury position. In a note dated July 3, 2007, Dr. Shamsnia continued to support appellant's disability for work due to low back pain and bulging disc at L4-5.

By decision dated September 27, 2007, the Office terminated appellant's wage-loss and medical benefits effective September 30, 2007.

On August 29, 2007 Dr. Shamsnia stated that appellant's symptoms were unchanged but that he could return to sedentary work. He again opined that appellant had an abnormal MRI scan with minimal bulging at L4-5 and abnormal disc intensity at S1. On September 26, 2007 Dr. Shamsnia stated that appellant's findings and disability were unchanged. In a note dated October 17, 2007, he stated that appellant could return to work with limitations. On December 10, 2007 Dr. Shamsnia stated that appellant was performing light-duty work in an office without difficulty.

On September 10, 2008 Dr. Shamsnia reiterated that appellant was performing light-duty work but continued to experience low back discomfort. He completed narrative reports on May 16 and October 2, 2008 and noted appellant's medical treatment. Dr. Shamsnia stated that appellant had a history of a work injury with bulging disc at L4-5 and spasm demonstrated by MRI scan as well as radiculopathy demonstrated by EMG. He noted that appellant could

perform light-duty work and opined that appellant's current symptoms and findings were due to his April 5, 2006 employment injury.

Appellant requested reconsideration on September 20, 2008. He submitted a brief from his attorney on October 28, 2008. Dr. Shamsnia completed a treatment note on December 3, 2008. He stated that appellant's neurologic status was unchanged, that he continued to experience low back pain and that he was taking pain medication.

By decision dated January 5, 2009, the Office denied modification of the September 27, 2007 decisions.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.² The Office's burden of proof in termination compensation 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 of disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which require further medical treatment.⁴

The Federal Employees' Compensation Act provides that, if there is a 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.⁵ The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician of an Office medical adviser or consultant, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case.⁶ It is well established that, when 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 proper factual and medical background must be given special weight.⁷

¹ *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

² *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

³ *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001).

⁴ *Mary A. Lowe*, *supra* note 3.

⁵ 5 U.S.C. §§ 8101-8193, 8123.

⁶ 20 C.F.R. § 10.321.

⁷ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for a low back strain and entered him on the periodic rolls. Appellant's attending physicians, Drs. Alum and Richardson, physicians specializing in preventative medicine and Dr. Shamsnia, a Board-certified neurologist of professorial rank, supported his claim for total disability and need for medical treatment due to this condition. The Office referred appellant to Dr. Cenac, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a November 6, 2006 report, Dr. Cenac found that appellant had no objective evidence of orthopedic mechanical dysfunction or neurological deficits causally related to the April 5, 2006 employment injury. He opined that appellant could return to his date-of-injury position with no restrictions. Due to the disagreement between appellant's physicians and the Office referral physician regarding the nature and extent of appellant's ongoing physical condition and disability, the Office properly referred appellant to Dr. Nutik, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

In reports dated June 27, July 16 and August 1, 2007, Dr. Nutik provided an accurate history of injury and detailed findings on physical examination. He reviewed appellant's diagnostic studies and noted that the EMG demonstrated left S1 radiculopathy, but there was no clinical correlation to indicate left S1 nerve root involvement. Dr. Nutik recommended a repeat EMG. He reviewed appellant's MRI scan films and found very minimal anterior listhesis of L4 and L5 in the forward flexion view as well as a minimal bulge at L4-5 slightly more prominent towards the right. Dr. Nutik found no evidence for any root involvement. He opined that appellant's MRI scan was within normal limits with no evidence of disc herniations. Dr. Nutik stated that his clinical examination did not reveal any objective findings to indicate disability in the low back or left hip. He noted that appellant demonstrated inconsistencies during the clinical examination based on significant complaints of pain, sensory deficits and motor impairments not documented by the clinical findings. Dr. Nutik opined that appellant's subjective complaints were not related to his April 5, 2006 employment injury. He opined that appellant had sustained a low back strain which should have resolved within three or four months following the date of injury. Dr. Nutik stated that appellant should be capable of returning to his normal work. He opined that additional treatment was not necessary and that there were no objective clinical findings to indicate disability.

It is well established that, when 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 proper factual and medical background must be given special weight.⁸ The Board finds that Dr. Nutik's report is entitled to special weight and is sufficiently well reasoned and detailed to resolve the conflict of medical opinion evidence. Dr. Nutik provided extensive findings on physical examination, reviewed the MRI scan and EMG and explained why he felt that appellant's current symptoms were not related to his accepted employment injury of lumbar strain.

Appellant submitted additional treatment notes from Dr. Shamsnia in response to the Office's proposal to terminate his compensation benefits. On July 3, 2007 Dr. Shamsnia

⁸ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

continued to support appellant's disability for work due to low back pain and bulging disc at L4-5. This note did not provide detailed physical findings or medical reasoning in support of the conclusions offered. Moreover, as Dr. Shamsnia was on one side of the conflict that Dr. Nutik resolved, the additional report from Dr. Shamsnia is insufficient to overcome the weight accorded Dr. Nutik as the impartial medical examiner or to create a new conflict.⁹

The Board finds that the Office met its burden of proof to terminate appellant's compensation and medical benefits effective September 30, 1997.

LEGAL PRECEDENT -- ISSUE 2

Once the Office has met its burden of proof in terminating compensation benefits, the burden of proof shifts to appellant to establish that she remains entitled to compensation benefits after the date of termination. To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background support such a causal relationship.¹⁰

ANALYSIS -- ISSUE 2

Following the Office's September 27, 2007 decision terminating his compensation benefits effective September 30, 2007, appellant requested reconsideration on September 20, 2008. Appellant submitted a series of notes from Dr. Shamsnia dated August 29, 2007 to December 3, 2008. Dr. Shamsnia opined that appellant had an abnormal MRI scan with minimal bulging at L4-5 and abnormal disc intensity at S1. He stated that appellant's symptoms were unchanged and that he could return to sedentary work. These notes do not contain any narrative history of injury, detailed physical findings or medical reasoning to establish any continuing disability or medical residuals as a result of appellant's accepted employment injury.

Dr. Shamsnia also completed narrative reports on May 16 and October 2, 2008 and reported that appellant had a history of a work injury with bulging disc at L4-5 and spasm demonstrated by MRI scan as well as radiculopathy demonstrated by EMG. He noted that appellant could perform light-duty work and opined that appellant's current symptoms and findings were due to his April 5, 2006 employment injury. While these reports do relate appellant's history and offer an opinion that appellant's current condition is due to his accepted employment injury, Dr. Shamsnia did not offer any medical reasoning explaining why he believed that appellant's ongoing symptoms and disability were due to his accepted employment injury of low back strain. Without medical rationale, these reports are not sufficient to meet appellant's burden of proof and the Office properly denied his claim.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective September 30, 2007. The Board further finds that appellant

⁹ *Jaja K. Asaramo*, 55 ECAB 200, 205 (2004).

¹⁰ *Manuel Gill*, 52 ECAB 282, 287 (2001).

failed to submit the necessary medical opinion evidence to meet his burden of proof in establishing that he had any continuing disability or medical residuals on or after September 30, 2007.

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2010
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