

sacroiliitis and lumbar disc disorder without myelopathy and she was placed on the periodic rolls. Appellant underwent an approved lumbar laminectomy on June 13, 2006.

Appellant was treated by Dr. Michael Gorum, a Board-certified neurologist. On October 16, 2006 Dr. Gorum opined that she was unable to return to any meaningful employment due to her spinal injury.

The Office referred appellant to Dr. Alexander Doman, a Board-certified orthopedic surgeon, for an opinion as to whether residuals from the accepted injury precluded her return to her date-of-injury position. In a September 28, 2007 report, Dr. Doman reviewed appellant's medical history and provided findings on examination. He found her reflexes in the upper and lower extremities to be normal. Dr. Doman noted cogwheeling and voluntary giving way weakness when strength testing the quadriceps, hamstrings and tibialis anterior muscles on the right lower extremity. There were no signs of muscular atrophy. Sensation was intact. Appellant complained of severe low back pain with flexion of the knees bilaterally while in the prone position. X-rays of the lumbar spine showed evidence of a posterior lumbar interbody fusion with a 25 percent spondylolisthesis at L4-5. An October 10, 2007 computerized tomography (CT) scan revealed degenerative changes in the lumbar spine. Dr. Doman diagnosed degenerative lumbar spinal stenosis with symptom exaggeration. He opined that any present disability that appellant had was a combination of psychogenic complaints of pain from symptom exaggeration and the natural progression of her underlying disorder of degenerative spinal stenosis, in conjunction with her preexisting degenerative spondylolisthesis at L4-5. Dr. Doman opined that appellant's degenerative spondylolisthesis at L4-5 had resolved with respect to the work injury. He stated:

“[Appellant] sustained a minor injury at work in 2003 and this would not have resulted in the spondylolisthesis itself. It may have resulted in a temporary aggravation of her underlying degenerative spondylolisthesis that would have resolved within several months. The same applies to the accepted condition of the lumbar intervertebral disc disorder and sacroiliitis. Any current residuals from the present examination are due to the natural history of the underlying disorder.”

Dr. Doman opined that appellant was able to perform the duties of a teacher with respect to the accepted injury, which had resolved. Any claimed residuals were due to a combination of symptom exaggeration and the natural course of her preexisting degenerative spondylolisthesis.

Appellant submitted a January 28, 2008 report from Dr. Craig Dawson, a treating physician, who diagnosed lumbar osteoarthritis, degeneration of the lumbar disc, cervical spondylosis and lumbar stenosis. Dr. Dawson opined that appellant was disabled from employment.

The Office found a conflict in the medical opinion between Dr. Dawson and Dr. Doman as to whether appellant was disabled. In order to resolve the conflict, it referred appellant, together with a statement of accepted facts, a job description for her date-of-injury teaching position, the case record and a list of questions to be addressed, to Dr. Graham Howorth, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a July 22, 2008 report, based upon a March 14, 2008 examination and review of the medical file and statement of accepted facts, Dr. Howorth found no objective evidence of residuals directly attributable to the accepted employment injury. He stated that appellant had nonanatomic and nondermatomal pain, indicating symptom magnification and exaggeration. Physical examination demonstrated varying motor strength and cogwheeling, which Dr. Howorth attributed to symptom magnification, her degenerative condition and the natural progression of aging. He advised that the accepted conditions, which included lumbar subluxation, sacroiliitis and lumbar intervertebral disc without myelopathy, were all preexisting degenerative conditions and that the symptoms caused by the aggravation of these conditions should have resolved within six to nine months of the accepted injury. Persistent pain or current residuals would be from the natural history of this disorder. Dr. Howorth noted that appellant's subjective complaints greatly outweighed the objective physical findings and stated that "she may indeed have some type of residual pain; however, this would not warrant continued disability." He found that appellant could work in a sedentary position that included some walking, standing and carrying light objects and opined that she was able to return to her job as a teacher.

By letter dated December 4, 2008, the Office proposed to terminate appellant's compensation based on Dr. Howorth's July 22, 2008 report, which established that she was no longer disabled from performing the duties of her date-of-injury job. Based upon the fact that it approved a lumbar laminectomy in June 2006, the Office accepted that the November 12, 2003 injury caused a permanent aggravation of appellant's underlying degenerative spondylolisthesis. Appellant was provided 30 days to submit additional evidence or argument in response to the notice.

In a letter dated December 30, 2008, appellant contended that the Office erroneously relied on Dr. Howorth's report. She argued that Dr. Howorth's examination was incomplete and that Dr. Dawson's report should carry more weight. In an undated letter, Dr. Dawson stated that appellant remained physically disabled and unable to work in any capacity, noting that she suffered radicular leg pain, lower back pain and intermittent leg weakness. He opined that she would never be physically capable of gainful employment.

By decision dated January 26, 2009, the Office terminated appellant's wage-loss compensation benefits effective February 15, 2009. On February 3, 2009 appellant requested a telephonic hearing.

Appellant submitted follow-up reports from Dr. Dawson from January 21 through July 28, 2009 reflecting his opinion that she was disabled. On January 21, 2009 Dr. Dawson diagnosed postlaminectomy syndrome, lumbar region, lumbar spinal stenosis, and costal chondritis and stated that appellant had pain with any activity. On March 10, 2009 he stated that appellant had excruciating bilateral leg pain. On April 22, 2009 Dr. Dawson diagnosed facet arthropathy, foraminal stenosis at L4-5 with nerve impairment. On July 28, 2009 he administered a lumbar epidural steroid injection.

At a May 15, 2009 hearing, appellant contended that she was disabled from her teaching position. Counsel contended that Dr. Howorth's report was not based on an accurate factual background, because his report was written after the Office accepted the claim for permanent aggravation of spondylolisthesis.

In an October 14, 2009 decision, an Office hearing representative determined that the January 26, 2009 decision should be vacated. He found that Dr. Howorth's report failed to adequately explain why appellant's ongoing disability was not causally related to 2003 injury or the basis for his conclusion that the accepted aggravation had ceased. The case was set aside and remanded for further development of the medical evidence and clarification of the accepted conditions.

By decision dated October 29, 2009, the chief of the Branch of Hearing and Reviews reopened the case on his own motion and vacated the October 14, 2009 decision. He noted that the issue in question was not properly addressed on appeal.¹ The chief of the Branch found that Dr. Howorth's report constituted the weight of the medical evidence, was well rationalized and resolved the conflict in medical opinion. It established that appellant no longer had disability related to the accepted conditions and was capable of performing the duties of her date-of-injury position as a teacher. Accordingly, the January 26, 2009 decision was affirmed.

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.² 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.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.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

¹ Under section 8128(a), the Office has the discretion to reopen a case for review on the merits, on its own motion or on application by the claimant. It must exercise this discretion in accordance with section 10.138(b) of the implementing federal regulations.

² *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

³ *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁴ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁵ 5 U.S.C. § 8123(a); *see also R.H.*, 59 ECAB 382 (2008); *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁶ *V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

ANALYSIS -- ISSUE 1

The Board finds that the Office properly terminated appellant's wage-loss compensation effective February 15, 2009.

The Office found that a conflict in medical opinion arose between Dr. Dawson, an attending physician and Dr. Doman, an Office referral physician, as to whether appellant had any disability causally related to her accepted conditions. In order to resolve the conflict, it referred appellant, together with a statement of accepted facts and the medical record to Dr. Howorth for an impartial medical examination. Based on Dr. Howorth's review of the case record and findings on examination, he found no objective evidence of residuals directly attributable to appellant's accepted employment injury. He stated that appellant's subjective complaints greatly outweighed the objective physical findings, stating that "she may indeed have some type of residual pain; however, this would not warrant continued disability." Dr. Howorth indicated that her nonanatomic and nondermatomal pain was indicative of symptom magnification and exaggeration and that the symptoms caused by the aggravation of her preexisting degenerative conditions had resolved within six to nine months of the accepted injury. He opined that appellant could work in a sedentary position that included some walking, standing and carrying light objects and that she was able to return to her job as a teacher. The Board finds that Dr. Howorth's opinion is well rationalized and based on a proper factual and medical background.

Appellant's representative contended that Dr. Howorth's opinion lacked probative value because it was not based on an accurate statement of facts. Counsel argued that his conclusion that appellant no longer had residuals from the accepted injury might have changed had he known that the Office had accepted the condition of permanent aggravation of spondylolisthesis. The Board notes, however, that the Office's expansion of the claim to include permanent aggravation of spondylolisthesis does not affect the outcome of this case. The issue in this case is not whether appellant has residuals from her accepted injury, which would be relevant were the Office attempting to terminate her medical benefits. Rather, the issue is whether she is disabled from performing the duties of her date-of-injury teaching position.⁷ Dr. Howorth's report clearly establishes that appellant was capable of performing those duties.

Dr. Howorth's well-rationalized report constitutes the special weight of the medical opinion evidence afforded an impartial medical specialist and establishes that appellant is no longer disabled due to residuals of her accepted conditions. The Board, therefore, finds that the Office met its burden of proof to terminate appellant's compensation benefits effective February 15, 2009.

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. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence

⁷ See *I.J.*, *supra* note 3.

that she had an employment-related disability, which continued after termination of compensation benefits.⁸

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. 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.⁹

ANALYSIS -- ISSUE 2

After the Office properly terminated appellant's wage-loss compensation benefits, she had the burden to establish continuing employment-related disability.¹⁰ Dr. Dawson continued to opine that appellant was disabled in follow-up reports for the period January 21 through July 28, 2009. However, none of his reports contains an explanation as to how appellant was disabled due to her accepted injury. Medical conclusions unsupported by rationale are of little probative value.¹¹ The Board finds that these reports are of limited probative value and are insufficient to establish that appellant was disabled after February 15, 2009.

CONCLUSION

The Board finds that Office met its burden of proof to terminate appellant's compensation benefits effective February 15, 2009. The Board also finds that appellant has failed to establish that she had any employment-related disability after February 15, 2009 due to her accepted injury.

⁸ *Id.*

⁹ *Id.*; *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *I.J.*, *supra* note 3

¹¹ *Willa M. Frazier*, 55 ECAB 379 (2004).

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2010
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board