

lumbar sprain/strain, lumbosacral sprain and cervical sprain.¹ Appellant stopped work following the injury and was placed on the periodic rolls for temporary total disability.

In a June 8, 2006 duty status report (Form CA-17), Dr. Jordan S. Fersel, a treating Board-certified anesthesiologist, stated that appellant was able to return to work with restrictions. Appellant returned to limited-duty work on June 13, 2006.

On August 25, 2006 appellant filed a claim alleging a recurrence of disability beginning June 14, 2006. In a December 7, 2006 letter, the Office informed her that her claim for a recurrence of disability was being developed as a new claim.² By decision dated January 16, 2007, the Office denied her claim.

The Office received additional medical records from Dr. Fersel pertaining to his treatment of appellant. Dr. Fersel diagnosed degenerative cervical disc disease and lumbosacral radiculitis.

On December 27, 2007 Dr. Melvin P. Vigman, a second opinion Board-certified psychiatrist and neurologist, performed a physical examination of appellant at the request of the Office. He reviewed the medical evidence, a statement of accepted facts and list of questions. On physical examination there was normal upper extremity strength, a normal sensory examination of both upper and lower extremities and intake 2+ reflexes. Dr. Vigman reported that appellant complained of pain with straight leg motion, hip movement in any direction and minor leg movements. A review of a January 20, 2006 magnetic resonance imaging (MRI) scan of the lumbar spine revealed no nerve root compression or herniated disc or traumatic changes, although there were some minor degenerative changes. Dr. Vigman noted an April 11, 2006 MRI scan of the cervical spine showed bulging discs at C4-5, C5-6 and C6-7, but no herniated disc, nerve root compression or spinal root compression. He stated that the multiple cervical bulging discs were consistent with typical degenerative changes and not of traumatic origin. Dr. Vigman found that appellant had no neurological disease, but did have signs of symptom elaboration and magnification. He determined that appellant's symptoms were not supported by objective evidence and that she had sustained a minor sprain as a result of the employment injury. As appellant was found normal from a neurological standpoint, Dr. Vigman concluded that she had no disability or residuals of the December 9, 2007 employment injury.

In a February 3, 2008 report, Dr. David Rubinfeld, a second opinion Board-certified orthopedic surgeon, reviewed the medical evidence, statement of accepted facts and list of questions. On physical examination he found normal muscle strength in the upper and lower extremities with no spasm or tenderness on palpitation in the cervical or thoracolumbar spine. Dr. Rubinfeld diagnosed cervical and lumbosacral sprains, by history. Based upon his physical examination and review of the medical evidence, he concluded that appellant had no disability or ongoing residuals from her accepted conditions. Dr. Rubinfeld stated that there was no objective evidence to establish that appellant had residuals of the accepted cervical and lumbosacral sprains.

¹ The Office assigned claim number xxxxxx887.

² The Office assigned claim number xxxxxx388.

On March 31, 2008 the Office proposed to terminate appellant's compensation. It found that the weight of the medical evidence was represented by the opinions of Dr. Vigman, a second opinion Board-certified psychiatrist and neurologist, and Dr. Rubinfeld, a second opinion Board-certified orthopedic surgeon. The opinions of these physicians established that appellant's accepted cervical and lumbosacral sprains had resolved and that she had no residual disability due to her accepted employment injury. The Office allowed her 30 days to submit additional evidence.

In a letter dated April 28, 2008, appellant's counsel disagreed with the proposed termination of compensation; however, no additional evidence was submitted.

By decision dated May 7, 2008, the Office terminated appellant's compensation benefits effective that day on the grounds that her accepted conditions had resolved.

On March 31, 2009 appellant, through new counsel, requested reconsideration. In a March 17, 2009 report, Dr. Fersel diagnosed lumbosacral radiculitis, cervical radiculitis, right S1 radiculitis, bilateral occipital neuritis and bilateral sacroiliac joint derangement, which he attributed to the December 9, 2005 employment injury. He stated that appellant's subjective complaints were supported by the objective evidence. On physical examination Dr. Fersel listed decreased bilateral leg extension and flexion, decreased right leg sensation, decreased cervical range of motion and decreased lumbosacral range of motion. He noted that appellant had pain complaints, limited mobility and required a cane for ambulation. Dr. Fersel found that she was totally and permanently disabled from work.

By decision dated September 28, 2009, the Office denied modification of the May 7, 2008 decision terminating appellant's compensation. It found Dr. Fersel's March 17, 2009 report was insufficient to create a conflict in medical opinion as it was unrationalized.

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.³ After it has determined that an employee has disability causally related to his 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.⁴ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ To terminate authorization for medical treatment, the Office must

³ *S.F.*, 59 ECAB ___ (Docket No. 08-426, issued July 16, 2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *I.J.*, 59 ECAB 524 (Docket No. 07-2362, issued March 11, 2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁵ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁶ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁷

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained lumbar sprain/strain, lumbosacral sprain and cervical sprain as a result of the December 9, 2005 work incident. It terminated appellant's compensation benefits effective May 7, 2008 on the grounds that the accepted conditions had resolved with residuals. The Office accorded determinative weight to the opinions of Drs. Vigman and Rubinfeld, the second opinion specialists.

In a December 27, 2007 report, Dr. Vigman, a second opinion Board-certified psychiatrist and neurologist, reviewed appellant's medical history, including diagnostic tests and provided detailed findings on physical examination. Subjective findings included complaints of pain during any hip movement, minor leg movements and straight leg raising. There were no muscle spasms. A review of MRI scans of the lumbar and cervical spine revealed no nerve root compression or herniated disc or traumatic changes. Dr. Vigman noted there was evidence of minor degenerative changes in the lumbar spine and bulging discs at C4-5, C5-6 and C6-7. Appellant's neurological examination revealed no objective evidence of any neurological condition. Dr. Vigman opined that, based on her normal neurological examination, appellant had no disability or residuals as a result of her accepted December 9, 2005 employment injury.

Dr. Rubinfeld, a second opinion Board-certified orthopedic surgeon, reviewed appellant's medical history, including diagnostic tests and provided detailed findings on physical examination. A physical examination revealed normal muscle strength in the upper and lower extremities and no spasm or tenderness on palpitation in the cervical or thoracolumbar spine. Based upon his physical examination and review of the medical evidence, Dr. Rubinfeld concluded that appellant had no disability or residuals from her accepted employment injuries.

The reports of Drs. Vigman and Rubinfeld are based upon a complete and accurate factual and medical background and detailed findings on physical examination. Dr. Vigman is a Board-certified neurologist and psychiatrist and Dr. Rubinfeld is a Board-certified orthopedic surgeon. The Board finds that both Dr. Vigman and Rubinfeld provided a thorough and well-rationalized report which established that appellant had no continuing disability or medical condition causally related to her accepted lumbar sprain/strain, lumbosacral sprain and cervical sprain. Accordingly, the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective May 7, 2008 based on the medical opinions of Dr. Vigman and Rubinfeld that the accepted lumbar sprain/strain, lumbosacral sprain and cervical sprain conditions had resolved.

⁷ *Kathryn E. Demarsh, supra note 6; James F. Weikel, 54 ECAB 660 (2003).*

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to her accepted injury.⁸

ANALYSIS -- ISSUE 2

The Board finds that, following the proper termination of her compensation and medical benefits on May 7, 2008, appellant failed to establish that she had any continuing disability or medical condition causally related to her December 9, 2005 employment-related lumbar sprain/strain, lumbosacral sprain and cervical sprain conditions. In support of her request for reconsideration, appellant submitted a March 17, 2009 report from Dr. Fersel, who opined that appellant was totally disabled due to her December 9, 2005 employment injury. Dr. Fersel opined that as a result of this injury appellant sustained diagnosed lumbosacral radiculitis, cervical radiculitis, right S1 radiculitis, bilateral occipital neuritis and bilateral sacroiliac joint derangement conditions. The Board notes that the Office has not accepted the conditions of lumbosacral radiculitis, cervical radiculitis, right S1 radiculitis, bilateral occipital neuritis and bilateral sacroiliac joint derangement as employment related. For conditions not accepted by the Office as being employment related, it is appellant's burden to provide rationalized medical evidence sufficient to establish causal relation.⁹ Dr. Fersel provided no rationale explaining how appellant's conditions were caused or related to her accepted December 9, 2005 employment injury. The Board has held that a medical opinion not fortified by rationale is of diminished probative value.¹⁰ Thus, Dr. Fersel's report is insufficient to create a conflict with the reports of Drs. Vigman and Rubinfeld. Thus, the Office properly found appellant failed to establish that she had any continuing residuals or disability after May 7, 2008.

On appeal appellant's counsel contends that the opinions of Drs. Vigman and Rubinfeld are not entitled to greater weight than Dr. Fersel's opinion and that there is an unresolved conflict in the medical opinion evidence. As noted above, Dr. Fersel's opinion is insufficient to create a conflict with the opinions of Drs. Vigman and Rubinfeld. He provided no rationale explaining how appellant's disability was employment related. Moreover, as noted above the Office has only accepted that appellant sustained lumbar sprain/strain, lumbosacral sprain and cervical sprain. It has not accepted the conditions of diagnosed lumbosacral radiculitis, cervical radiculitis, right S1 radiculitis, bilateral occipital neuritis and bilateral sacroiliac joint derangement and thus appellant has the burden of proof to establish an employment relationship,¹¹ which she has not done. Dr. Fersel's March 17, 2009 report contained no rationale explaining his conclusions or the diagnoses contained therein and, as addressed above, is insufficient to create a conflict in the medical opinion evidence.

⁸ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

⁹ *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁰ *F.T.*, 61 ECAB ___ (Docket No. 09-919, issued December 7, 2009); *Cecilia M. Corley*, 56 ECAB 662 (2005); *Willa M. Frazier*, 55 ECAB 379 (2004).

¹¹ See *JaJa K. Asaramo*, 55 ECAB 104 (2004).

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective May 7, 2008. The Board further finds that appellant did not meet her burden of proof to establish that she had any work-related disability or medical condition after May 7, 2008.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 28, 2009 is affirmed.

Issued: October 5, 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