

medical opinion to establish that she no longer had any residuals of her accepted condition. His opinion was not based on a proper factual and medical background. The impartial medical specialist failed to apply the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) in determining appellant's permanent impairment. He did not properly refute the findings of an attending physician who found that she had annular tears at L4-5 and L5-S1.

FACTUAL HISTORY

The Office accepted that on September 30, 2003 appellant, then a 36-year-old transportation security screener, sustained a lumbar strain while in the performance of duty.

On August 5, 2004 the Office referred appellant, together with a statement of accepted facts and medical record, to Dr. Jerrold M. Sherman, a Board-certified orthopedic surgeon, for a second opinion medical examination to determine the nature and extent of her employment-related injury and disability and appropriate treatment. In an August 27, 2004 medical report, Dr. Sherman found that her September 30, 2003 lumbar strain had resolved without neurologic deficit. Appellant did not require any further medical treatment. She could perform her regular work duties as a transportation security screener with no restrictions. Dr. Sherman stated that findings on physical and x-ray examination were consistent with a normal lumbar spine.

On November 10, 2004 the Office issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on Dr. Sherman's August 27, 2004 medical opinion. Appellant was afforded 30 days to respond to this notice.

In reports dated December 3 and 11, 2004, Dr. George M. Oehlsen, an attending osteopath, advised that appellant sustained sacroiliitis, piriformis contractures and lumbar sprain/strain due to the September 30, 2003 employment injury. Appellant was totally disabled from December 11, 2004 to January 8, 2005.

By decision dated February 24, 2005, the Office terminated appellant's compensation for wage-loss and medical benefits with regard to her accepted employment-related injury, effective February 19, 2005. It found that Dr. Sherman's August 27, 2004 opinion constituted the weight of the medical opinion evidence. On March 21, 2005 appellant requested an oral hearing before an Office hearing representative.

In a September 1, 2005 decision, an Office hearing representative set aside the February 24, 2005 decision and remanded the case to the Office. She found a conflict in the medical opinion evidence between Dr. Sherman and Dr. Oehlsen as to whether appellant had any continuing residuals of the September 30, 2003 employment injury. On remand, the hearing representative instructed the Office to refer appellant to an appropriate impartial medical examiner to resolve the conflict.

By letter dated November 29, 2005, the Office referred appellant, together with a statement of accepted facts and medical record, to Dr. Donald R. MacKay, a Board-certified orthopedic surgeon, for an impartial medical examination. In a January 24, 2006 report, Dr. MacKay listed normal findings on physical and objective examination. He diagnosed

lumbosacral and coccygeal pain of uncertain cause and lumbar strain secondary to the September 30, 2003 injury. Dr. MacKay stated that the cause of appellant's continuing complaint of back pain was uncertain because it was not supported by his objective findings but she did not require any further medical treatment. He advised that, although she could not perform her regular work duties due to pain, she could work eight hours per day with restrictions.

On February 9, 2006 the Office issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on Dr. MacKay's January 24, 2006 medical opinion. Appellant was afforded 30 days to respond to this notice.

In reports dated December 31, 2005 to January 15, 2006, Dr. Oehlsen reiterated his prior opinion that appellant's sacroiliitis, piriformis contractures and lumbar sprain/strain were causally related to the September 30, 2003 employment injury and that she was totally disabled for work. He listed her physical restrictions in a September 25, 2005 work capacity evaluation.

In reports dated May 17 and July 13, 2005, Dr. Samuel A. Wise, a Board-certified physiatrist, advised that appellant possibly sustained spina bifida occulta, chronic valve syndromes and other autoimmune diseases.

By decision dated March 13, 2006, the Office terminated appellant's compensation for wage-loss and medical benefits effective that date. The medical evidence submitted was found insufficient to outweigh the special weight accorded to Dr. MacKay's impartial medical opinion. By letter dated April 6, 2006, appellant requested a telephonic hearing with an Office hearing representative.

In a June 22, 2006 decision, an Office hearing representative set aside the March 13, 2006 termination decision and remanded the case to the Office to obtain a supplemental report from Dr. MacKay clarifying his opinion that there were no objective findings of employment-related disability, yet appellant was unable to perform full-duty work. It was unclear whether he prescribed work restrictions due to residuals of the September 30, 2003 employment injury or for some other reason, such as her resistance to return to work or the possibility of future injury.

In a July 6, 2006 supplemental report, Dr. MacKay stated that, on an objective basis, appellant should be able to return to her regular work duties. However, due to appellant's ongoing complaints of pain, he stated that she should be assigned light-duty work which would decrease the risk of reinjuring her back.

By decision dated July 17, 2006, the Office terminated appellant's compensation for wage-loss and medical benefits effective that date. It found that Dr. MacKay's medical opinion was entitled to special weight accorded an impartial medical specialist. On August 6, 2006 appellant requested an oral hearing.

In a July 19, 2007 decision, an Office hearing representative set aside the July 17, 2006 termination decision and remanded the case to the Office to obtain a supplemental report from Dr. MacKay as to whether diagnostic test results of record demonstrated that appellant's continuing back pain was causally related to the September 30, 2003 employment injury.

Due to Dr. MacKay's retirement in 2006, the Office, on September 27, 2007, referred appellant, together with a statement of accepted facts and medical record, to Dr. Reynold L. Rimoldi for an impartial medical examination.

In an October 31, 2007 report, Dr. Rimoldi reviewed a history of appellant's September 30, 2003 injury, medical treatment and smoking background. He noted her complaint of lumbar spine pain with radiation down both lower extremities with the main discomfort located in her lumbar spine. Appellant rated her pain 8 out of 10 at the time of Dr. Rimoldi's examination and stated that it was 10 out of 10 at its worse level. Dr. Rimoldi listed essentially normal findings on physical examination. Appellant did not use any type of lateral support. She did not wear a brace or corset. No trigger points were noted. Motor and sensory examinations of the lower extremities including, key dermatomes and myotomes tested from L3 to S1 were intact. Reflexes were two out of four and symmetrical at the patella and Achilles. Straight leg raising was negative and hip range of motion did not increase appellant's pain. Appellant had five percent limitation of the lumbar spine range of motion with diffuse tenderness throughout the lumbosacral region.

Dr. Rimoldi diagnosed nonspecific lumbar enthesopathy. He stated that it was reasonable that appellant sustained a soft tissue lumbar sprain/strain injury as a result of the September 30, 2003 injury. Dr. Rimoldi stated that, following conservative treatment, a magnetic resonance imaging (MRI) scan showed no objective findings. He noted Dr. MacKay's opinion that there were no objective findings to explain appellant's ongoing complaints and that she could perform her regular work duties. Dr. Rimoldi advised that contrary to the finding of Dr. Michael J. McKenna, a Board-certified anesthesiologist, that a discogram showed annular tears at L4-5 and L5-S1, a January 2004 MRI scan did not demonstrate this condition. He opined that there were no objective findings to support appellant's continuing subjective complaints of pain. Appellant did not have any ratable impairment. Dr. Rimoldi advised that she could perform her regular work duties with no restrictions.

On November 16, 2007 the Office issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on Dr. Rimoldi's October 31, 2007 impartial medical opinion. Appellant was afforded 30 days to respond to this notice.

In an April 4, 2005 report, Dr. Wise listed findings on physical examination and reviewed diagnostic test results. He advised that appellant had increased angulation of the lumbar spine at L5-S1 and otherwise straight lumbar spine. Appellant also had scoliosis, which may have been a structural problem. In a February 14, 2007 report, Dr. Wise stated that her complaint of continuing and worsening back pain was consistent with Dr. McKenna's finding that she had tears at L4-5 and L5-S1.

In a November 30, 2006 report, Dr. McKenna provided the results of a provocation discography of L3-4, L4-5 and L5-S1. The L3-4 and L4-5 discs were negative, producing no pain at pressures greater than 100 psi. The L5-S1 disc produced concordant pain at 70 psi, 67 psi above opening pressure. According to ISIS criteria, the L5-S1 disc was indeterminate. Dr. McKenna stated that a subsequent computerized tomography (CT) scan demonstrated annular tears at L4-5 and L5-S1. The study suggested that the L5-S1 segment was appellant's pain generator at a relatively high pressure. In reports dated December 13, 2006 to

December 18, 2007, Dr. McKenna listed essentially normal findings on physical examination and diagnosed axial back pain with lumbar disc pathology at L4-5 and L5-S1, bilateral lower extremity, probable significant lumbar zygapophyseal facet joint pain and a history of mitro valve prolapse. In a December 3, 2007 report, he recommended additional testing as the source of appellant's persistent pain could not be determined and treated. A discography and CT scan did not confirm that her pain was discogenic.

By decision dated January 14, 2008, the Office terminated appellant's wage-loss compensation and medical benefits with regard to her accepted employment-related injury, effective January 20, 2008. It accorded special weight to Dr. Rimoldi's October 31, 2007 impartial medical opinion.

On January 13, 2009 appellant, through counsel, requested reconsideration. In reports dated January 15 through February 21, 2008, Dr. McKenna reiterated his prior finding that appellant had axial back pain with lumbar disc pathology at L4-5 and L5-S1, bilateral lower extremity and probable significant lumbar zygapophyseal facet joint pain, an indeterminate provocation discography at L5-S1 and a history of mitro valve prolapse. In a December 2, 2008 report, Dr. Allan P. Long, a Board-certified chiropractic neurologist, reviewed a history of appellant's September 30, 2003 injury and medical treatment. He listed findings on physical examination and diagnosed lumbar sprain/strain, muscle spasm and sacroiliac sprain/strain. Dr. Long opined that appellant continued to experience residuals of the accepted injury and she was totally disabled for work. He stated that, more than likely, she had ongoing zygapophyseal joint damage with associated nerve irritation, which could account for most of her symptomatology that was complicated by annular disc tears at L4-5 and L5-S1, which could also produce associated symptoms.

By decision dated April 16, 2009, the Office denied modification of the January 14, 2008 termination decision. It found that the evidence submitted by appellant was insufficient to overcome Dr. Rimoldi's impartial medical opinion.¹

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³ Furthermore, the right to medical

¹ On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. *See* 20 C.F.R. § 501(c)(1); *J.T.*, 59 ECAB ____ (Docket No. 07-1898, issued January 7, 2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

³ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.⁴

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁵

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's wage-loss compensation and medical benefits as of January 20, 2008 on the grounds that she had no residuals or disability of the accepted employment-related lumbar strain. The Board notes that a conflict in the medical opinion evidence arose between Dr. Oehlsen, an attending physician, and Dr. Sherman, an Office referral physician, regarding whether she had any residuals or disability causally related to the September 30, 2003 employment injury. Dr. Oehlsen opined that appellant sustained sacroiliitis, piriformis contractures and lumbar sprain/strain and was totally disabled due to the employment injury. Dr. Sherman opined that the employment injury had resolved and she could return to her regular work duties as a transportation security screener with no restrictions.

The Office referred appellant to Dr. Rimoldi, the impartial medical specialist who provided an accurate history of injury and detailed essentially normal findings on physical examination with five percent limitation of the lumbar spine range of motion and diffuse tenderness throughout the lumbosacral region. In an October 31, 2007 report, Dr. Rimoldi opined that there were no objective findings to support appellant's subjective complaints of pain and that she could perform her regular work duties with no restrictions. On examination, he found that she did not use any type of lateral support. Appellant did not wear a brace or corset. Dr. Rimoldi found no trigger points, intact sensory and motor function of the bilateral lower extremities, symmetrical reflexes at the patella and Achilles and negative straight leg raising. He stated that hip range of motion did not increase appellant's pain. Dr. Rimoldi reviewed a January 2004 MRI scan which did not demonstrate annular tears at L4-5 and L5-S1. He diagnosed nonspecific lumbar enthesopathy.

The Board finds that Dr. Rimoldi's opinion is entitled to special weight accorded an impartial medical specialist and is sufficiently well reasoned and detailed to resolve the conflict of medical opinion evidence. Dr. Rimoldi provided extensive findings on physical examination and explained why he felt that appellant's current symptoms and disability were not causally related to the September 30, 2003 employment-related lumbar strain. The Board finds, therefore, that the Office met its burden of proof to terminate her compensation and medical benefits effective January 20, 2008.

⁴ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

⁵ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

Appellant did not submit any rationalized medical evidence to overcome the weight of Dr. Rimoldi's opinion or to create a new conflict. Dr. Wise's April 4, 2005 and February 14, 2007 reports found that she had increased angulation of the lumbar spine at L5-S1 and tears at L4-5 and L5-S1. His report failed to provide a rationalized medical opinion explaining how the diagnosed conditions were causally related to appellant's accepted employment injury. Reports that do not provide a rationalized medical opinion on the causal relationship of the condition are insufficient to create another conflict or overcome the special weight accorded an impartial specialist's opinion.⁶

Dr. McKenna's November 30, 2006 report found that a provocation discography demonstrated negative L3-4 and L4-5 discs, which did not produce any pain at pressure points greater than 100 psi. He stated that the L5-S1 disc produced concordant pain at 70 psi but was indeterminate based on ISIS criteria. A CT scan showed annular tears at L4-5 and L5-S1. Dr. McKenna opined that the L5-S1 segment was appellant's pain generator. His reports dated December 13, 2006 to December 18, 2007 found that she had axial back pain, "probable" significant lumbar zygapophyseal facet joint pain and a history of mitro valve prolapse. A provocation discography at L5-S1 was "indeterminate" for pain. Pain is a symptom, not a compensable medical diagnosis. Further, Dr. McKenna did not provide a firm diagnosis of a compensable condition, but only provided a speculative diagnosis of pain.⁷ In a December 3, 2007 report, he recommended additional testing to determine the source of appellant's pain. Moreover, none of Dr. McKenna's reports provided an opinion on the causal relationship between her lumbar pain and the September 30, 2003 employment injury.⁸

LEGAL PRECEDENT -- ISSUE 2

Following the proper termination of benefits, the claimant has the burden to establish continuing employment-related residuals and/or disability with probative medical evidence.⁹ The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated 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.¹⁰

⁶ *Alice J. Tysinger*, 51 ECAB 638, 646 (2000).

⁷ *See C.F.*, 60 ECAB ___ (Docket No. 08-1102, issued October 10, 2008) (pain is a symptom, not a compensable medical diagnosis); *Robert Broome*, 55 ECAB 339, 342 (2004).

⁸ *Alice J. Tysinge*, *supra* note 6.

⁹ *See Talmadge Miller*, 47 ECAB 673 (1996).

¹⁰ *Joe L. Wilkerson*, 47 ECAB 604 (1996); *Alberta S. Williamson*, 47 ECAB 569 (1996).

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any continuing residuals or total disability after January 20, 2008 due to her September 30, 2003 injury. Dr. McKenna's January 15 through February 21, 2008 reports reiterated his prior finding that appellant had axial back pain with lumbar disc pathology at L4-5 and L5-S1, bilateral lower extremity and probable significant lumbar zygapophyseal facet joint pain, a history of mitro valve prolapse and an indeterminate provocation discography at L5-S1 for pain. As stated, this evidence is of diminished probative value as it failed to provide a firm diagnosis and a rationalized opinion on the causal relationship between appellant's lumbar pain and the accepted injury and whether there was any resulting disability.

Dr. Long's December 2, 2008 report found that appellant's lumbar sprain/strain, muscle spasm and sacroiliac sprain/strain and disability for work were causally related to the September 30, 2003 injury. He also found that she "more than likely" suffered from ongoing zygapophysial joint damage with associated nerve irritation, which accounted for most of her symptomatology that was complicated by annular disc tears at L4-5 and L5-S1, which could also produce associated symptoms. Dr. Long did not provide a rationalized medical opinion addressing the causal relationship between the diagnosed conditions and the September 30, 2003 injury.¹¹ Further, he did not provide a firm diagnosis of a compensable condition but, only provided a speculative diagnosis of zygapophyseal joint damage.¹²

The Board finds that appellant did not submit sufficiently rationalized medical evidence to substantiate that the claimed continuing residuals or disability on or after January 20, 2008 were causally related to her employment-related lumbar strain.

The Board notes that, while Dr. Rimoldi opined that appellant had no ratable impairment without referencing the A.M.A., *Guides*, the relevant issue in this case is whether the Office properly terminated her compensation and medical benefits on the grounds that she no longer had any residuals and total disability causally related to the September 30, 2003 injury. As the Board has found, the Office met its burden of proof to terminate compensation benefits in this case based on the special weight accorded to Dr. Rimoldi's impartial medical opinion.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective January 20, 2008 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related lumbar strain. The Board also finds that she failed to meet her burden of proof that she had continuing disability or residuals causally related to the September 30, 2003 employment injury.

¹¹ *Alice J. Tysinge, supra* note 6.

¹² *C.F., supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2009 and January 14, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 1, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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