

An attending orthopedic surgeon, Dr. Sean Salehi, indicated in a December 14, 2006 report that appellant could work four hours per day as of December 18, 2006, at which time he returned to work at four hours per day. In a report dated July 3, 2007, he indicated that appellant could continue to work four hours per day, with a 50-pound lifting restriction and no repeated bending or twisting.

The Office referred appellant for a second opinion examination by Dr. Julie Wehner, an orthopedic surgeon. In a report dated September 7, 2007, Dr. Wehner provided a history and results on examination. She stated that there was no medical reason appellant could not work eight hours per day, noting it was six years after his disc surgery. Dr. Wehner also explained that his clinical examination was normal.

A conflict in the medical evidence was found and appellant, along with medical records and a statement of accepted facts, was referred to Dr. Steven Delheimer, a Board certified-neurosurgeon, selected as a referee examiner. In a report dated April 18, 2008, Dr. Delheimer provided history, reviewed medical evidence and reported results on examination. He diagnosed “subjective complaints of pain involving the right lower extremity along with loss of stamina. These subjective complaints are unsubstantiated by objective diagnostic or clinical neurologic examination findings.” Dr. Delheimer opined that appellant was capable of working eight hours per day, noting the lack of objective findings. He further opined that appellant no longer had residuals of the employment injury. Dr. Delheimer, in a July 19, 2002 progress note, reported that appellant displayed no limp, was able to walk without difficulty, able to walk on his toes, able to squat in a normal fashion with normal sensory and motor testing.

By letter dated May 12, 2008, the Office advised appellant that it proposed to terminate his compensation for wage-loss and medical benefits. Appellant was advised to submit relevant evidence within 30 days. He submitted a June 3, 2008 report from Dr. Salehi, who provided results on examination and stated that appellant should continue modified duty at four hours per day. In a report dated June 12, 2008, Dr. Neeraj Jain, an anesthesiologist, indicated that a paravertebral sympathetic block would be performed.

In a decision dated September 17, 2008, the Office terminated compensation for wage-loss and medical benefits. Appellant requested a hearing before an Office hearing representative, which was held on March 24, 2009. By decision dated May 28, 2009, the hearing representative affirmed the September 17, 2008 termination of compensation benefits.

LEGAL PRECEDENT

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

² *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.³

It is well established that, when a case is referred to a referee physician 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.⁴

ANALYSIS

In the present case, the Office found a conflict in the medical evidence under 5 U.S.C. § 8123(a).⁵ The attending physician, Dr. Salehi, indicated that appellant could work only four hours per day, while a second opinion physician, Dr. Wehner, determined he could work eight hours per day. The physician selected as a referee physician, Dr. Delheimer, provided a detailed medical report with a rationalized medical opinion on the issue. He reported no objective findings and opined that appellant could work eight hours per day. In addition, Dr. Delheimer found that appellant no longer had residuals of the employment injury.⁶ He explained his opinion, noting examination findings, the medical record and a July 19, 2002 treatment note.

As noted above, a well-rationalized medical opinion from a referee physician is entitled to special weight. Dr. Delheimer provided a complete report with a rationalized medical opinion that represents the weight of the medical evidence.⁷

On appeal, appellant argues that the medical evidence as a whole is contrary to Dr. Delheimer's findings and his report should not be the weight of the evidence. As noted above, there was a conflict in evidence regarding appellant's continuing employment-related disability and pursuant to the Act he was referred to Dr. Delheimer for a referee examination. Dr. Delheimer's report is entitled to special weight if the medical opinion is well rationalized and based on a complete background. Appellant argues that Dr. Delheimer did not have a complete background as he stated he did not review magnetic resonance imaging (MRI) scans dated March 22 and May 2, 2005. The Board notes that Dr. Delheimer did review the written report of a March 22, 2005 MRI scan. As to May 2, 2005, this appeared to be a computerized tomography scan that was not submitted to the record until June 18, 2008. The referee physician provided an

³ *Furman G. Peake*, 41 ECAB 361 (1990).

⁴ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

⁵ This section provides that, if there is a disagreement between an attending physician and an Office physician, the Office shall select a third physician to make an examination. According to Office regulations, this examination is called a referee examination. 20 C.F.R. § 10.321.

⁶ The Office hearing representative stated that there was no conflict regarding continuing residuals of the employment injury. The Board notes that the issue was the nature and extent of an employment-related disability. Dr. Delheimer's opinion as to residuals is relevant to that issue, as it would indicate that any restrictions would not be employment related.

⁷ On appeal, appellant submitted a new medical report. The Board's review of a case is limited to evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c)(1).

extensive review of the medical evidence and there is no indication that his opinion was based on an inaccurate or incomplete medical background.

Appellant also briefly questioned why Dr. Delheimer was selected and why a physician closer to his home was not selected. A referee physician is selected using a rotational system based on the Physicians Directory System (PDS) for the appropriate geographic area.⁸ The evidence indicated the PDS was used and no evidence was presented that the selection of Dr. Delheimer was improper.⁹

CONCLUSION

The Board finds that the Office met its burden of proof to terminate compensation for wage-loss and medical benefits effective September 17, 2008.

ORDER

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

Issued: September 14, 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

⁸ See *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008).

⁹ Appellant stated the referee physician's office was over 100 miles from his residence in Des Plaines, Illinois, but that appears to be a reference to an office located in La Salle, Illinois. The referee examination was scheduled in an office located in Chicago, Illinois, a distance considerably shorter than 100 miles from appellant's residence.