



The Board further found that the weight of the medical evidence rested with the opinion of Dr. Robert T. Israel, a Board-certified orthopedic surgeon and Office referral physician, and found that the Office met its burden to terminate appellant's compensation benefits effective June 15, 2007.<sup>1</sup> The law and the facts of the previous Board decision are incorporated herein by reference.

On June 25, 2008 appellant, through his attorney, requested reconsideration and submitted a July 21, 2007 report of a magnetic resonance imaging (MRI) scan of the lumbar spine that demonstrated herniated discs at L1-2, L2-3, L3-4 and L4-5 and a disc bulge at L5-S1. In treatment notes dated from June 28 to December 6, 2007, Dr. Scott T. Gray, an attending Board-certified orthopedic surgeon, described appellant's complaints of low back pain and provided physical examination findings. On March 10, 2008 he advised that appellant complained of severe pain with limited motion. Dr. Gray reported a slow antalgic gait and that appellant had difficulty getting on and off the examination table. On physical examination, muscle spasm was present from L1 through L5 and over the sacrum with exquisite right sacroiliac joint tenderness and diminished lumbar range of motion. Straight leg raising was to 40 degrees on the left and 60 on the right. Dr. Gray noted disagreement with Dr. Israel's opinion,<sup>2</sup> stating that the MRI scan findings were conclusive that appellant had herniated discs. He concluded that appellant was totally disabled.

By decision dated September 25, 2008, the Office denied modification of the prior decisions, finding that Dr. Gray did not provide a rationalized explanation as to how the employment injury caused the diagnosed condition. On January 12, 2009 appellant, through his attorney, again requested reconsideration. In reports dated October 9, 2007, Dr. Gray noted that appellant fell down the steps several days prior when his back gave way. He advised that appellant had been under his care since January 5, 2006 when he complained of a low back injury sustained when he was picking up mail. Dr. Gray noted appellant's complaints of pain, spasm, and limited motion and provided findings on physical examination, with positive straight leg raising. He advised that appellant was totally disabled.

In an April 6, 2009 decision, the Office denied appellant's reconsideration request.

Appellant, through his attorney, again requested reconsideration on April 21, 2009. In a March 9, 2009 report, Dr. Gray noted that appellant reported that he first injured his back in 1999 while lifting mail and reinjured his back in November 2005, again lifting mail. He described appellant's physical findings beginning on January 5, 2006, stating that she was seen multiple times with similar findings. Dr. Gray noted the March 2008 MRI scan findings and advised that appellant had been totally disabled. He stated that appellant was again seen on March 9, 2009 when physical examination demonstrated continued paravertebral muscle spasm and tenderness at L4-5 and L5-S1, exquisite right sacroiliac joint tenderness and diminished lumbar range of

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<sup>1</sup> Docket No. 07-2355 (issued April 2, 2008). The Office accepted that appellant sustained a lumbar sprain and low back syndrome on November 5, 2005 while picking up bags of express mail. Appellant received wage-loss compensation beginning on November 8, 2005. Under a separate claim, file number xxxxxx083, he has an accepted 1999 back injury. On March 23, 2007 the claims were doubled.

<sup>2</sup> *Id.*

motion. Dr. Gray advised that appellant was permanently disabled and required narcotic medication. A March 23, 2009 MRI scan of the lumbosacral spine demonstrated degenerative disc disease throughout the lumbar spine with a left paracentral disc herniation at L1-2 with deformity upon the thecal sac, annular disc bulging at L2-3 and left intraforaminal disc herniations at the L3-4 and L4-5 levels, most pronounced at L4-5 and a broad-based disc herniation and annular disc bulging at L5-S1 with displacement of the left S1 nerve root within its lateral recess.

In a June 18, 2009 decision, the Office denied modification of the prior decisions.

On October 19, 2009 appellant, through his attorney, requested reconsideration and submitted a September 10, 2009 report from Dr. Gray who stated that Dr. Israel's diagnosis of a resolved lumbar sprain was incorrect and failed to address the presence of multiple herniated discs, as shown on MRI scan studies. Counsel recommended that appellant be referred back to Dr. Israel, along with the MRI scan studies, for reevaluation.

By decision dated January 19, 2010, the Office denied modification of the prior decisions finding that Dr. Gray did not provide a rationalized explanation of how the diagnosed herniated discs were causally related to the employment injury.

### **LEGAL PRECEDENT**

The Board previously found that the Office met its burden of proof to terminate appellant's compensation benefits on June 15, 2007.<sup>3</sup> The burden shifted to appellant to establish that he had any continuing disability causally related to his accepted lumbar sprain and lumbar (lower back) syndrome.<sup>4</sup> To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>5</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>6</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment 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.<sup>7</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

<sup>5</sup> *Jennifer Atkerson*, 55 ECAB 317 (2004).

<sup>6</sup> *Id.*

<sup>7</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

## ANALYSIS

The Board finds that appellant submitted insufficient medical evidence with his reconsideration requests to establish that he continued to be disabled after June 15, 2007 due to the accepted lumbar sprain and lumbar (lower back) syndrome. As noted, it is appellant's burden to establish that she continued to be disabled due to the employment injury after June 15, 2007. Under the Federal Employees' Compensation Act, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>8</sup>

Dr. Gray, an attending orthopedist, submitted a number of treatment notes and reports dated from June 28, 2007 to September 10, 2009 in which he provided examination findings and voiced his disagreement with the opinion of Dr. Israel, an Office referral physician whose opinion the Board previously determined was well rationalized and constituted the weight of the medical evidence that appellant had no employment-related residuals due to the November 7, 2005 employment injury.<sup>9</sup> While he outlined appellant's treatment beginning on January 5, 2006 and diagnosed multiple disc herniations from L1 to S1, as documented on MRI scan testing, that rendered appellant incapable of working, disc herniations have not been accepted as employment related. Dr. Gray did not describe in any report the mechanics of how these multiple disc herniations were caused by the November 5, 2005 employment injury. His opinion is therefore insufficient to establish that these conditions are employment related<sup>10</sup> or to create a conflict in medical evidence. Thus, appellant did not meet his burden of proof to establish that he continued to be disabled after June 15, 2007 due to the November 7, 2005 employment injury.

## CONCLUSION

The Board finds that appellant failed to establish that he had any continuing employment-related disability or condition after June 15, 2007.

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<sup>8</sup> See 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>9</sup> *Supra* note 1.

<sup>10</sup> *Jennifer Atkerson*, *supra* note 5.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 19, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: February 11, 2011  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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