

for sprains of the neck, lumbar region, both shoulders and upper arms and resolved contusion of the left finger. It paid compensation benefits and eventually placed appellant on the periodic rolls. Appellant returned to work for one day in April or May 2009 and then retired.¹

Appellant was treated by Dr. John DeBender, a Board-certified orthopedic surgeon, Dr. Stephen Esses, a Board-certified orthopedic surgeon, and Dr. Fahim Farhat, a Board-certified family practitioner. Her attending physician, Dr. DeBender, continued to keep her off work.

The Office referred appellant to Dr. Donald Mauldin, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Mauldin examined her on July 31, 2008 and noted that she demonstrated extreme painful behavior. He provided an impression of status post cervical and lumbar strain, chronic cervical radicular syndrome complaints, chronic lumbar and lumbar radicular complaints and history of shoulder strain with no documentation of significant structural injury. Dr. Mauldin opined there was no objective evidence that appellant sustained anything more than a soft tissue strain of the cervical and lumbar spine possibly minimal to the shoulders in the November 21, 2008 injury. He indicated that her complaints were all subjective and nonphysiological in nature. Dr. Mauldin stated that appellant's diagnostic studies were degenerative in nature and there was no documentation that she had a significant structural injury that required ongoing medical care. He opined that she had significant symptom magnification and her recovery was delayed from that perspective. Dr. Mauldin stated that there was no documentation that the injury mechanism caused significant damage to the cervical or lumbar spine or the upper extremities that would require prolonged active medical care. He opined that appellant could work regular duty but she would function very poorly due to her symptom magnification. Dr. Mauldin noted that she attempted a functional capacity evaluation on July 31, 2008,² but was only able to do the handgrip test. He noted that appellant did not want to continue with the evaluation because she felt that she would injure her lower back.

The Office provided a copy of Dr. Mauldin's report to Dr. DeBender. In an August 21, 2008 report, Dr. DeBender stated that he did not agree that appellant could return to work for eight hours a day. He advised that she continued to have neck and back pain and recently had been approved for aqua therapy treatments. Dr. DeBender further noted that appellant was contemplating having back surgery with Dr. Esses.

The Office determined a conflict of medical opinion existed between Dr. Mauldin and Dr. DeBender regarding appellant's ability to work. Appellant was referred, along with a statement of accepted facts, a list of questions and the medical record, to Dr. Grant McKeever, a Board-certified orthopedic surgeon, for an impartial medical examination. In a December 3, 2008 report, Dr. McKeever noted her history of back problems since 1988 as well as her November 21, 2007 work injury. He noted that since 2003 appellant worked restricted work duties and was on the same medication for low back pain. Dr. McKeever reviewed the medical record, which included x-rays of the cervical spine and left shoulder as well as recent magnetic

¹ Under file number xxxxxx559, appellant has an accepted claim for low back strain and L4-L5 herniated nucleus pulposus for a March 25, 2002 work injury. This claim remains open for medical benefits.

² The functional capacity evaluation was performed on July 31, 2008 by Dr. William P. Osborne, a Board-certified orthopedic surgeon and Office referral physician.

resonance imaging scans of the lumbar spine. He set forth his physical findings and diagnosed: resolved acute cervical strain, chronic cervical syndrome, resolved acute lumbosacral strain and chronic lumbosacral syndrome. Dr. McKeever opined that appellant's cervical and lumbosacral strains had resolved within a few weeks of her injury and that she returned to her preinjury status of chronic cervical and lumbosacral syndromes. He noted current symptoms included tenderness over the muscles and mild spasm, with no evidence of radiculopathy. Dr. McKeever opined that these symptoms were not work related, but were an ordinary disease of life. In a December 19, 2008 addendum, he noted that a December 16, 2008 functional capacity evaluation showed an inconsistent effort on all tests and did not represent a valid effort. Dr. McKeever opined that appellant could return to work without restrictions. He recommended that she be weaned from her medication. In a December 19, 2008 work restriction evaluation, Dr. McKeever opined that appellant could perform her usual job on a full-time basis without any restrictions.

In a December 18, 2008 report, Dr. Esses indicated that appellant's examination was essentially unchanged. He noted that she was neurologically intact with decreased range of motion of both the cervical and lumbar spine and spasm of the paravertebral muscles. Dr. Esses thought it was reasonable for appellant to apply for disability.

On January 21, 2009 the Office proposed to terminate appellant's compensation and medical benefits. It determined that, based on Dr. McKeever's December 3, 2008 report, her injury-related disability had ceased and that the accepted conditions had resolved. Appellant was afforded 30 days within which to submit any additional evidence.

In a February 25, 2009 statement, appellant provided a history of her injury, her opinion regarding Dr. Mauldin's and Dr. McKeever's reports and advised that her back had been hurting since 2004 and that she has an open case for that condition. She submitted diagnostic and medical reports previously of record, along with chiropractic reports, a January 9, 2009 impairment rating and additional medical evidence.

In a January 26, 2009 report, Dr. DeBender indicated that appellant continued to have subjective pain complaints in the cervical, thoracic and lumbar spine as well as complaints of pain and numbness extending into both legs and the right arm. He advised no further surgery or treatment has been recommended for her and suggested she see Dr. Esses for follow ups as needed. Dr. DeBender continued to opine that appellant was unable to return to work.

In a February 2, 2009 report, Dr. Farhat advised that appellant had been a patient for at least 10 years and opined that the job injury of November 21, 2007 caused her neck, shoulders, upper arms and back pain. He stated that she was prescribed pain medication to manage her pain and that she took her medicine on an as needed basis and did not abuse it.

In a February 3, 2009 report, Dr. Donald T. Lazarz, a Board-certified orthopedic surgeon, noted the history of injury and that he reviewed statements from Drs. Esses, DeBender and Farhat, which noted that appellant was totally disabled from her work injuries and could not work. He diagnosed chronic cervical strain and chronic lumbar strain. Dr. Lazarz opined that the work injury appellant described aggravated her previous troubles and that she would always

have pain, limitation in activities and strength and difficulty in carrying on the type of occupation that she had in the past. He advised that she should continue treating with Dr. Farhat.

In a February 9, 2009 report, Dr. Esses stated that appellant was being treated for low back and neck disorders and has been demonstrated to have stenosis at L4-L5, L5-S1 and C5-C6 and C6-C7. He opined that her symptoms from her conditions were related to the November 21, 2007 work injury and that she required ongoing treatment. Dr. Esses further indicated that he disagreed with Dr. McKeever's opinion.

By decision dated March 11, 2009, the Office finalized the termination of compensation benefits effective March 15, 2009. It found that the weight of the evidence rested with the opinion of Dr. McKeever, the impartial medical examiner.

On March 26, 2009 appellant, through her attorney, requested a telephonic hearing, which was held on October 26, 2009. She testified that she was on limited duty with back problems due to a lifting injury in 2003 when she had the accident in the truck. Appellant stated that she had leg numbness that went down to her feet and that she retired early as she was not able to do what was asked of her and she limped everyday in constant pain. She stated that the Office's physicians lied about her and noted that the appointments only lasted 15 minutes and that she was unable to perform the tests. Appellant indicated that she was on constant medication, that she did not lead a normal life and that she needed her case reopened so that she could get treatment. At the hearing, she was advised that her prior case number xxxxxxx559, which had been combined with the current case, was still open for medical benefits.

Evidence received prior to and after the hearing included: a March 28, 2009 statement from appellant; a March 3, 2009 functional capacity evaluation which reflected she was rated for sedentary work and was unable to work her regular duties without a risk of reinjury; chiropractic reports; a prescription from Dr. Esses for a manual muscle test; a copy of a November 30, 2009 manual muscle test and additional medical evidence.

The medical evidence included a January 16, 2009 report from Dr. Farhat who stated that appellant had chronic neck and back pain for almost six years that caused physical disabilities and affected her blood pressure. Dr. Farhat opined that she was totally disabled. In an April 6, 2009 report, he opined appellant's chronic spine problems in her low back were a result of recurrent work-related back injuries. Dr. Farhat noted that her first injury occurred on May 10, 1987, the second on March 25, 2002 and the third on November 21, 2007. He reiterated that appellant's pain medications were taken only as needed basis.

In a February 25, 2009 report, Dr. DeBender stated that he agreed with Dr. Esses that appellant was 100 percent disabled and she could not return to the workforce due to her November 21, 2007 work injury. In an August 4, 2009 attending physician's report, he reiterated that appellant was totally disabled.

In a November 30, 2009 report, Dr. Esses advised appellant continued to have neck and back pain and that she required medication for those injuries. He also noted that she was referred to pain management and provided a copy of the December 2, 2009 referral.

By decision dated December 23, 2009, an Office hearing representative affirmed the Office's termination of compensation. The hearing representative noted that appellant's medical benefits in case number xxxxxx559 were not affected by the current decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ It may not terminate compensation without establishing that disability ceased or that it was 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 to compensation for disability.⁶ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.⁷

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.⁸

ANALYSIS

The Office accepted that appellant sustained sprains of the neck, lumbar region, both shoulders and upper arms and resolved contusion of the left finger as a result of the November 21, 2007 work injury. It determined that a conflict in medical opinion evidence arose between the attending physician, Dr. DeBender, and the Office referral physician, Dr. Maudlin, as to whether appellant had any continuing residuals or disability causally related to her accepted November 21, 2007 employment-related injury. Dr. DeBender opined that she had continued employment-related residuals and total disability. On the other hand, Dr. Mauldin opined that appellant's employment-related sprains had resolved and she could return to work with no restrictions. Consequently, the Office properly referred her to Dr. McKeever to resolve the conflict.

In his report of December 3, 2008, Dr. McKeever provided a comprehensive review of appellant's history, including the fact that she was on restricted work duties since 2003 and set

³ *Jorge E. Sotomayor*, 52 ECAB 105, 106 (2000).

⁴ *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

⁵ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁶ *T.P.*, 58 ECAB 524 (2007).

⁷ *I.J.*, 59 ECAB 408 (2008); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ *Gloria J. Godfrey*, 52 ECAB 486 (2001). *See* 5 U.S.C. § 8123(a).

forth extensive findings from examination. He diagnosed resolved acute cervical strain, chronic cervical syndrome, resolved acute lumbosacral strain and chronic lumbosacral syndrome. Dr. McKeever opined that appellant's cervical and lumbosacral strains had resolved within a few weeks of her injury and that she returned to her preinjury status of chronic cervical and lumbosacral syndromes. He opined that her current symptoms of tenderness over the muscles, mild spasm, with no evidence of radiculopathy, were not work related but were an ordinary disease of life. Dr. McKeever had a functional capacity evaluation performed on December 16, 2008 and noted that the testing revealed that appellant provided inconsistent effort. He opined that she could return to work without restrictions.

The Board finds that Dr. McKeever had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. McKeever is a specialist in the appropriate field. He offered no basis to support that appellant had residuals or work-related disability from the accepted conditions. Dr. McKeever's opinion as set forth in his report of December 3, 2008 is found to be probative evidence and reliable. While appellant has alleged that she only saw Dr. McKeever for 15 minutes at the most and that his report was filled with lies, she has offered no evidence to support her allegations. The Board has held that an impartial specialist properly selected under the Office's rotational procedures will be presumed unbiased and the party seeking disqualification bears the substantial burden of proving otherwise; mere allegations are insufficient to establish bias.⁹ The Board finds that, under the circumstances of this case, the opinion of Dr. McKeever is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related conditions had ceased.

Appellant submitted additional reports from Dr. DeBender in which he continued to opine that she was totally disabled and could not return to work. Dr. DeBender did not specifically address how any continuing condition or disability were causally related to the accepted employment injuries. Additionally, he was on one side of a medical conflict that Dr. McKeever resolved.¹⁰ This report is insufficient to overcome that of Dr. McKeever or to create a new medical conflict.

Appellant also submitted medical reports from Dr. Esses, Dr. Lazarz and Dr. Farhat, who all opined that she was totally disabled due to neck and back pain. In his February 9, 2009 report, Dr. Esses diagnosed lumbar and cervical stenosis. In his February 3, 2009 report, Dr. Lazarz opined that appellant's work injury aggravated her previous troubles. In his April 6, 2009 report, Dr. Farhat opined that appellant's problems were the result of her recurrent work-related back injuries. However, these physicians did not provide any objective evidence or medical rationale to explain why she had continuing residuals of the November 21, 2007 work injury which was accepted for sprains of the neck, lumbar region, shoulders and arms. The Board has found that vague and unrationalized medical opinions on causal relationship are of

⁹ *Geraldine Foster*, 54 ECAB 435 (2003); *William Fidurski*, 54 ECAB 146 (2002).

¹⁰ *See E.H.*, 60 ECAB ___ (Docket No. 08-1862, issued July 8, 2009); *Dorothy Sidwell*, 41 ECAB 857 (1990) (reports from a physician who was on one side of a medical conflict that an impartial specialist resolved, are generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict).

diminished probative value.¹¹ Dr. McKeever explained that appellant's continuing symptoms were due to the normal degenerative process. Thus, the reports from Dr. Esses, Dr. Lazarz and Dr. Farhat are insufficient to overcome that of Dr. McKeever or to create a new medical conflict.

The other evidence submitted, such as reports of diagnostic testing, are irrelevant to the issue at hand as they do not address causal relationship. The chiropractic reports submitted do not diagnose a spinal subluxation based on x-ray. A chiropractor is not considered a physician under the Federal Employees' Compensation Act if spinal subluxation has not been diagnosed by x-ray.¹² Thus, the chiropractic reports are of no probative medical value. There is no other medical evidence showing any continuing residuals or disability due to appellant's accepted conditions. Thus, the Office met its burden of proof to terminate appellant's benefits as the weight of the medical evidence indicates that residuals of the employment-related conditions had ceased effective March 15, 2009.

CONCLUSION

The Board finds that the Office properly terminated appellant's wage loss and medical benefits effective March 15, 2009.

¹¹ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹² *See A.O.*, 60 ECAB ____ (Docket No. 08-580, issued January 28, 2009) (without diagnosing a subluxation from x-ray, a chiropractor is not a physician under the Act).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated December 23, 2009 is affirmed.

Issued: January 13, 2011
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