



effective June 2, 2008. Determinative weight was accorded to Dr. Andrew M. Hutter, the Board-certified orthopedic surgeon and OWCP referral physician, who opined that appellant was no longer disabled as a result of her accepted conditions and that she had no injury-related residuals. The Board also found that OWCP did not abuse its discretion in denying her request for reconsideration.<sup>2</sup> The facts and the history contained in the prior appeal are incorporated by reference.

In a letter dated August 10, 2010, appellant, through her attorney, requested reconsideration. She stated that the medical reports from Dr. Paul A. Foddai, a Board-certified orthopedic surgeon, dated October 20 and December 21, 2006 were not considered by either OWCP or the Board when her compensation benefits were terminated effective June 2, 2008 and argued that a conflict in medical evidence existed between Dr. Foddai and Dr. Andrew M. Hutter, an OWCP referral physician, upon whose opinion the termination was based. Appellant also submitted several medical reports and diagnostic testing previously of record along with new medical evidence, diagnostic testing and physical therapy reports.

The record indicates that Dr. Foddai, a Board-certified orthopedic surgeon, served as an OWCP referral physician prior to Dr. Hutter. In his October 20, 2006 report, Dr. Foddai opined that appellant's date-of-injury condition had not resolved and her disability appeared to be due to the work-related injury and its residuals. He indicated that OWCP's questions could not be answered as appellant needed a comprehensive and complete reevaluation including repeat magnetic resonance imaging (MRI) scan examination of the cervical and lumbar spine to determine the status of the disc herniations, if any. Dr. Foddai also recommended neurological evaluation with electrodiagnostic studies to determine whether there was evidence of cervical or lumbar radiculopathy. The studies were performed and by December 21, 2006 report, he opined, given the history, physical examination and review of the medical records as well as MRI scan, that appellant appeared to have evidence of disc herniations at C4-5 and C5-6 with compression. However, the electrodiagnostic studies were negative for radiculopathy. Dr. Foddai opined that the peripheral neuropathy found on electrodiagnostic studies was probably secondary to diabetes. He noted there was no evidence of lumbar spine disc herniation. Dr. Foddai opined that appellant was capable of working five days per week for four hours per day with restrictions. He indicated that he was increasing the number of days appellant could work because no cervical radiculopathy was present on the electrodiagnostic studies.

The following reports were submitted by appellant on reconsideration. In a January 11, 2010 report, Dr. Amir Hanna, a Board-certified internist, noted that appellant was seen in follow-up for trauma due to falling and for a strong chiropractic adjustment. He opined that she had possible cervical and lumbosacral radiculopathy and ordered diagnostic testing. In his January 21, 2010 report, Dr. Hanna advised appellant's MRI scan of the cervical spine and lumbosacral spine was abnormal and showed signs and symptoms of possible cervical and lumbosacral radiculopathy.

---

<sup>2</sup> Docket No. 09-1606 (issued May 13, 2010). OWCP has accepted that appellant sustained a cervical sprain and cervical and lumbar radiculopathy as a result of a January 16, 2004 elevator malfunction.

In a February 22, 2010 report, Dr. Joseph G.A. Ibrahim, a Board-certified physiatrist, noted the history of injury and that appellant was involved in a motor vehicle accident on September 20, 2009, which aggravated her neck pain. He also noted that she was improving with physical therapy. Dr. Ibrahim noted examination findings and provided an impression of lumbar facet joint syndrome, cervical disc herniation, cervical radiculopathy and cervical spondylosis without myelopathy. On March 12, 2010 appellant underwent cervical epidural steroid injections, and Dr. Ibrahim indicated postprocedure diagnoses were cervical herniated disc and cervical radiculopathy. In several progress reports, dated March 31, May 3, June 1 and 29, and July 29, 2010, Dr. Ibrahim presented examination findings and provided impressions of cervical herniated disc, cervical radiculopathy and right shoulder impingement syndrome.

In a July 13, 2010 report, Dr. Michel S. Badin indicated that appellant had been under his care since her January 16, 2004 work-related accident. He stated that appellant was suffering from cervical and lumbar radiculopathy and that her clinical history indicated that she was not able to perform at her job more than four hours per day.

By decision dated November 10, 2010, OWCP denied modification of its previous decision.

### **LEGAL PRECEDENT**

The Board previously affirmed that OWCP met its burden of proof in terminating appellant's compensation benefits effective June 2, 2008. As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden for reinstating compensation benefits shifted to appellant.<sup>3</sup>

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.<sup>4</sup>

### **ANALYSIS**

Following the Board's decision affirming OWCP's decision which terminated her compensation benefits effective June 2, 2008, appellant requested reconsideration and submitted medical evidence to support her allegation of continuing employment-related disability.

The medical evidence submitted, however, fails to offer any opinion or explanation as to how appellant's work-related conditions remained active or disabling. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative

---

<sup>3</sup> See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>4</sup> *Joe L. Wilkerson*, 47 ECAB 604 (1996); *Alberta S. Williamson*, 47 ECAB 569 (1996).

value on the issue of causal relationship.<sup>5</sup> In his reports of January 11 and 21, 2010, Dr. Hanna opined that appellant had possible cervical and lumbosacral radiculopathy. However, he offered no explanation as to how her work-related conditions remained active or disabling after June 2, 2008. Furthermore, it is unclear whether Dr. Hanna has the correct history of injury as he related the history of appellant's condition to a trauma due to falling and following a strong chiropractic adjustment.<sup>6</sup> Thus, his reports are of limited probative value regarding any ongoing residuals of the accepted conditions.

In the February 22, 2010 report, Dr. Ibrahim noted the history of injury and that appellant was involved in a motor vehicle accident on September 20, 2009, which aggravated her neck pain. In several reports, he presented examination findings and opined that she had cervical herniated disc, cervical radiculopathy and right shoulder impingement syndrome. However, Dr. Ibrahim provided no specific opinion regarding the cause of appellant's condition.<sup>7</sup> This is important given the fact that appellant was involved in a motor vehicle accident a few years after her work-related injury. Thus, Dr. Ibrahim's reports are of limited probative value regarding any ongoing residuals of the accepted conditions.

In his July 13, 2010 report, Dr. Badin stated that appellant was suffering from cervical and lumbar radiculopathy and that her clinical history indicates that she is not able to perform at her job more than four hours per day. While he indicated that he had been treating her since her January 16, 2004 work injury, he did not specifically address why her accepted conditions and disability continued on and after June 2, 2008.<sup>8</sup> Thus, Dr. Badin's July 13, 2010 report is of limited probative value regarding any ongoing residuals of the accepted conditions.

Appellant also submitted evidence which was previously of record. Reports of her diagnostic testing do not contain an opinion on causal relationship and, thus, are of limited probative value.<sup>9</sup> Physical therapy notes were also submitted, but under FECA, a physical therapist is not considered a physician. Therefore, these notes are of no probative medical value.<sup>10</sup>

Appellant also contended before OWCP and on appeal that medical evidence from Dr. Foddai from 2006 was not considered and that a conflict in medical opinion existed between

---

<sup>5</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>6</sup> *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

<sup>7</sup> *See supra* note 5.

<sup>8</sup> *Id.*

<sup>9</sup> *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>10</sup> *See A.C.*, Docket No. 08-1453 (issued November 18, 2008) (records from a physical therapist do not constitute competent medical opinion in support of causal relation as a physical therapist is not a physician as defined under FECA); 5 U.S.C. § 8101(2) (provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

Dr. Foddai and Dr. Hutter. The Board finds these arguments are without merit. Dr. Foddai's reports were not referenced by OWCP or the Board with regard to terminating appellant's benefits because OWCP acted to terminate benefits in 2008 based upon current medical evidence at that time. The Board considered the medical evidence relevant to OWCP's decision to terminate compensation benefits effective June 2, 2008.<sup>11</sup> As noted, the Board found that the weight of the medical evidence rested with Dr. Hutter and established that appellant's work-related conditions and disability resolved effective June 2, 2008. While appellant argues a conflict in medical evidence exists between Dr. Foddai and Dr. Hutter, the record reflects that Dr. Foddai, like Dr. Hutter, is an OWCP referral physician. Under section 8123(a), a medical conflict in opinion cannot arise between two OWCP physicians.<sup>12</sup>

On appeal, appellant further argues that Dr. Badin's July 13, 2010 report is sufficient to create a conflict in medical opinion with that of Dr. Hutter. This argument is also without merit. As noted, Dr. Badin's July 13, 2010 report did not specifically address why appellant's accepted conditions and disability continued on and after June 2, 2008. Furthermore, he provided no medical reasoning explaining why her accepted conditions would have continued on and after June 2, 2008. Thus, Dr. Badin's report is insufficient to overcome that of Dr. Hutter or to create a medical conflict.

### **CONCLUSION**

The Board finds that appellant failed to establish that she had any continuing disability due to her accepted conditions after June 2, 2008.

---

<sup>11</sup> The Board's May 13, 2010 decision became final upon expiration of 30 days from the date of the decision. 20 C.F.R. § 501.6(d).

<sup>12</sup> See 5 U.S.C. § 8123(a) (provides that a medical conflict can arise between a physician of the employee and a physician of the United States).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated November 10, 2010 is affirmed.

Issued: November 15, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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