

2006 (File No. xxxxxx908).³ On November 30, 2006 she slipped on ice at the employing establishment parking lot and fell to the ground. OWCP accepted this latter injury for contusion of the coccyx (File No. xxxxxx894). The two claims were combined, and the July 10, 2006 injury file was designated the master file (No. xxxxxx908).

By decision dated April 16, 2009, OWCP terminated appellant's wage-loss compensation and medical benefits.⁴ The decision was based on the November 15, 2008 report of Dr. Steven P. Nadler, a Board-certified orthopedic surgeon and OWCP referral physician. Dr. Nadler disagreed with OWCP's acceptance of the claim for thoracic subluxation. He found instead that appellant sustained a thoracic sprain, which according to Dr. Nadler had since resolved and required no further medical treatment.⁵ As to appellant's coccygeal contusion, Dr. Nadler opined that this too had resolved without residuals and required no further medical treatment.

Appellant requested a hearing and submitted additional evidence from her chiropractor and treating physician.⁶ In a decision dated October 19, 2009, an OWCP hearing representative affirmed the April 16, 2009 decision terminating benefits.

When the case was previously on appeal, the Board found that the termination issue was not in posture for decision. The Board noted that the hearing representative had not considered appellant's recently submitted evidence. Accordingly, the Board remanded the case for OWCP to properly consider all evidence of record.⁷

³ Dr. Robert D. Bean, a chiropractor, began treating appellant in July 2006, and diagnosed thoracolumbar subluxation and resultant sprain/strain, which was based in part on a July 10, 2006 x-ray.

⁴ OWCP had previously issued a January 22, 2009 notice of its intention to terminate benefits.

⁵ Appellant obtained x-rays in advance of her examination by Dr. Nadler. A November 12, 2008 cervical x-ray revealed moderate spondylosis (C5-6). A similarly dated x-ray of the thoracic spine was interpreted as unremarkable. Lastly, a November 2, 2008 lumbar x-ray revealed mild facet degenerative changes (L6-S1) and no specific evidence of subluxation. In light of the lumbar x-ray, Dr. Nadler surmised that further diagnostic studies of the spine would reveal degenerative changes throughout the spine. He suggested that appellant probably had preexisting degenerative joint and disc disease. Dr. Nadler further surmised that appellant may have aggravated some degenerative joint or disc disease in the thoracic spine as a result of the July 2006 injury, but this would have been a temporary aggravation lasting approximately six to eight weeks.

⁶ Dr. Bean, appellant's chiropractor, provided an undated report that was presumably based in part on an August 24, 2009 examination. He diagnosed ongoing subluxations in the cervical (C1, C6 and C7), thoracic (T5 and T6), and lumbar (L4 and L5) spine. Appellant also submitted September 10 and 15, 2009 reports ostensibly from Dr. Paul M. Hoque, a Board-certified family practitioner, who had been appellant's family physician; however, he died almost a year prior to the September 2009 reports. During a November 5, 2008 telephone conversation, appellant advised OWCP of Dr. Hoque's recent death. While the September 10 and 15, 2009 reports identify Dr. Hoque as the author, both reports were likely authored by Dr. Esther Laura Kittle, a Board-certified family practitioner. A previous report dated February 18, 2009, also identified Dr. Hoque as the physician. This report, however, bore Dr. Kittle's initials "ELK." The September 10, 2009 two-page report noted Dr. Hoque's name at the bottom of both pages. However, the second page of the report also included the notation "signed by E. Laura Kittle, MD." Dr. Kittle also provided a September 10, 2009 duty status report (Form CA-17). Apart from the identity of their author, the September 10 and 15, 2009 reports indicated that appellant continued to receive treatment for injuries to her thoracic spine and coccyx.

⁷ The Board's October 26, 2010 order is incorporated herein by reference.

In a January 11, 2011 decision, the hearing representative considered the evidence from appellant's chiropractor and treating physician, and reaffirmed the termination of benefits based on Dr. Nadler's November 15, 2008 report.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁸ Having determined that an employee has a disability causally related to her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁹ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.¹⁰ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition which require further medical treatment.¹¹

ANALYSIS

When the case was pending before the Branch of Hearings and Review, appellant's counsel argued that Dr. Nadler's opinion was insufficient for purposes of terminating benefits because he did not follow the statement of accepted facts (SOAF). More specifically, counsel noted that Dr. Nadler disagreed with OWCP's acceptance of the claim for thoracic subluxation. The hearing representative was not persuaded by counsel's argument, noting instead that appellant's physicians had not presented any recent evidence of subluxations and/or failed to explain how the condition persisted for so long. The hearing representative essentially placed the onus on appellant to prove that she continued to have a subluxation of the thoracic spine.

Dr. Nadler repeatedly noted his disagreement with the accepted condition of thoracic subluxation. While he agreed with the diagnosis of coccygeal contusion, he stated emphatically "I do not agree with subluxation of the thoracic spine." Dr. Nadler believed appellant's symptoms in her thoracic spine were "most probably" related to a sprain or soft tissue injury. In response to the question of whether the "accepted condition of subluxation of the thoracic region [had] resolved," Dr. Nadler again noted he did not believe that appellant had a subluxation of the thoracic spine.

The Board finds that Dr. Nadler's opinion is inconsistent with the SOAF, and thus, insufficient to satisfy OWCP's burden of proof to terminate compensation and medical benefits. OWCP accepted appellant's claim for subluxation of the thoracic spine, and the SOAF provided Dr. Nadler reflected that. While Dr. Nadler may question whether the diagnosis was appropriate, he may not disregard the accepted facts of the case. The Board finds that Dr. Nadler's

⁸ *Curtis Hall*, 45 ECAB 316 (1994).

⁹ *Jason C. Armstrong*, 40 ECAB 907 (1989).

¹⁰ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

¹¹ *Calvin S. Mays*, 39 ECAB 993 (1988).

November 15, 2008 opinion lacks a proper factual background, and thus, is not rationalized.¹² OWCP bears the burden of proof to terminate benefits, not appellant. Accordingly, the Board finds that Dr. Nadler's November 15, 2008 report is insufficient to meet OWCP's burden.

CONCLUSION

OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective April 16, 2009.

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2011 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 3, 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

¹² Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*