United States Department of Labor
Employees' Compensation Appeals Board

L.K., Appellant	)	
	)	
and	)	**Docket No. 11-41**
	)	**Issued: September 6, 2011**
DEPARMENT OF AGRICULTURE, MEAT & POULTRY INSPECTION SERVICE, Philadelphia, PA, Employer	)	

Appearances:
Gordon Reiselt, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 4, 2010 appellant, through counsel, filed a timely appeal from an August 25, 2010 decision of the Office of Workers' Compensation Programs' (OWCP) hearing representative affirming the termination of her benefits. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly terminated appellant's compensation for wage-loss and medical benefits effective January 17, 2010 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injuries.

On appeal appellant's counsel contends the decision is contrary to the law and facts.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board on appeal. Appellant injured her left hand, forearm and fingers and her right palm while inspecting chicken carcasses on August 14, 2000. OWCP accepted the claim for bilateral trigger fingers and left medial epicondylitis. It reduced appellant's compensation benefits to reflect her capacity to earn wages as a Manager, Quality Control on March 4, 2003. Following requests for reconsideration, OWCP denied modification by decisions dated June 4, 2003 and June 28, 2004. On March 17, 2005 the Board issued an order remanding as the record before the Board was incomplete.[2] By decision dated July 15, 2005, OWCP reassembled the record and on June 28, 2004 reissued its decision denying modification of the March 4, 2003 loss of wage-earning capacity decision. In a June 13, 2006 decision, the Board affirmed the reduction of appellant's compensation based on her ability to earn wages as a Manager, Quality Control.[3] The Board found however that the case was not in posture for a decision on the issue of whether modification of the March 4, 2003 loss of wage-earning capacity was warranted. The Board found that the medical evidence submitted since the March 4, 2003 loss of wage-earning capacity decision warranted further development. The facts and the circumstances of the case as set out in the Board's prior decision are incorporated herein by reference.

On remand from the Board, OWCP referred appellant for a second opinion evaluation with Dr. Robert Allan Smith, a Board-certified orthopedic surgeon. On November 1, 2006 Dr. Smith reviewed the statement of accepted facts and medical record.[4] He provided findings on physical examination of the left elbow and upper extremity and found no hand deformities. Dr. Smith reported normal left elbow range of motion, no signs of left upper extremity mediated or sympathetic pain syndrome and no atrophy. He also found no nerve entrapment in the ulnar, medial or radial nerves and could not palpate any triggering in her digits. Based on his examination, appellant had no further residuals or disability as a result of the August 14, 2000 employment injury and was capable of returning to her date-of-injury position.

On November 8, 2006 OWCP proposed to terminate appellant's compensation benefits on the grounds that the weight of medical evidence from Dr. Smith established that she was no longer disabled due to the accepted condition. Appellant was given 30 days to present additional evidence or argument.

In a letter dated December 4, 2006, appellant's counsel disagreed with the proposal to terminate her compensation benefits.

In a December 6, 2006 report, Dr. Scott M. Fried, a treating Board-certified osteopathic orthopedic surgeon, provided a history of appellant's work injury and physical findings on examination. He diagnosed bilateral carpal tunnel syndrome with flexor tenosynovitis and

[2] Docket No. 04-1918 (issued March 17, 2005).

[3] Docket No, 05-1848 (issued June 13, 2006).

[4] He related that appellant suffered from a number of conditions, but that the only accepted conditions were bilateral trigger fingers and left medial epicondylitis.

bilateral trigger fingers; repetitive strain injury; brachial plexitis; and traumatically-induced median and radial neuropathy. Dr. Fried found appellant's conditions were directly caused by her repetitive employment duties. Appellant had severe disabilities as a result of her condition and was unable to perform the duties of the constructed position of Manager, Quality Control.

On March 22, 2007 OWCP determined there was a conflict in medical opinion between Drs. Smith and Fried on the issue of whether appellant had any continuing disability or residuals due to her accepted employment conditions. It referred her to Dr. William Kirkpatrick, a Board-certified orthopedic surgeon, to resolve the conflict. In an April 9 2007 report, Dr. Kirkpatrick reviewed the statement of accepted facts, medical evidence and performed a physical examination. Diagnoses included a history of employment-related bilateral trigger fingers and left medial epicondylitis and bilateral upper extremity pain syndrome. Dr. Kirkpatrick opined, based on his physical examination findings, that appellant no longer had any residuals of her accepted bilateral trigger fingers and left medial epicondylitis.

By decision dated May 4, 2007, OWCP finalized the termination of appellant's wage-loss and medical benefits effective May 13, 2007 based on the report of the impartial medical examiner, Dr. Kirkpatrick.

In a May 16, 2007 letter, appellant's counsel requested a telephonic hearing before an OWCP hearing representative, which was held on April 15, 2008.

By decision dated August 15, 2008, the hearing representative vacated the termination of benefits. She found Dr. Smith's report was insufficiently rationalized to create a conflict in the medical opinion evidence and, thus, Dr. Kirkpatrick could not be accorded the special weight due an impartial medical examiner. The hearing representative remanded the case to Dr. Kirkpatrick for further explanation as to whether there was a change in appellant's accepted work conditions. In addition, OWCP was instructed to prepare a new statement of accepted facts to include information regarding her 1997 injury claim[5] and August 14, 2000 occupational disease claim,[6] which was denied and provide the updated statement of accepted facts to Dr. Kirkpatrick for his review.

In an October 30, 2008 report, Dr. Kirkpatrick reviewed the amended statement of accepted facts; position descriptions for appellant's date-of-injury job and the constructed position and additional medical opinion evidence. He advised that Dr. Fried's diagnoses of bilateral repetitive strain injuries, bilateral brachial plexitis and bilateral radial median, ulnar and radial neuropathies were due to her previous occupational disease claim and not her August 14, 2000 traumatic injury. Dr. Kirkpatrick made physical findings that did not support the diagnoses of Dr. Fried and found no evidence that appellant's accepted employment-related conditions had materially worsened after March 2003. He reiterated his opinion that appellant's accepted bilateral trigger fingers and left medial epicondylitis had resolved. Dr. Kirkpatrick also found no

[5] OWCP assigned claim number xxxxxx177 with an injury date of November 14, 1997 OWCP accepted the conditions of bilateral hand overuse syndrome and bilateral trigger fingers, fifth finger.

[6] OWCP assigned claim number xxxxxx3684.

evidence to support the diagnosis of bilateral hand overuse syndrome, particularly since appellant has not worked since 2000.

On December 18, 2008 OWCP found a conflict in the medical opinion evidence between Drs. Kirkpatrick and Fried on the issue of whether appellant continued to have any work-related residuals and disability. It referred her to Dr. John F. Perry, a Board-certified orthopedic surgeon, for resolution of the conflict.

In a January 14, 2009 report, Dr. Perry related appellant's work and injury history. A physical examination revealed full cervical spine range of motion, negative Adson's test, negative Roo's test, no clicking, no swelling, no vasomotor changes in the upper extremities, no hair changes and no allodynia. Based upon his physical examination, injury history and review of the medical record, Dr. Perry diagnosed multiple unrelated complaints, cervical stenosis and spondylosis and history of cumulative trauma/overuse syndrome of her hands. He noted that appellant sustained a cumulative hand injury trauma, sprain or strain as a result of repetitive use in the late 1990's and that she has no evidence of that existing today. Dr. Perry based his conclusion on appellant's finger range of motion, which he described as fine, no swelling and normal neurologic examination. As to the diagnosis of thoracic outlet syndrome, he found no objective evidence supporting this diagnosis based on the negative Roo's and Adson's tests, no supporting physical examination clinical findings and the magnetic resonance imaging of the thoracic outlet was negative for compression. Dr. Perry related that appellant likely suffered from a systemic problem based on her complaints "of so many things in so many areas that the problem is not an injury" and opined that appellant could be suffering from a psychogenic or metabolic or infections condition. He found that appellant was capable of returning to work with no restrictions as he could not related her complaints to her August 14, 2000 employment injury and that any disability is a result of nontraumatic and/or nonorthopedic conditions.

In a March 29, 2009 supplemental report, Dr. Perry related that he had received additional medical reports and objective tests for review and that his opinion did not change. He stated that appellant showed no signs of any problems due to the August 2000 employment injury and had not worked since that year. Dr. Perry related that there was no evidence that appellant had sustained a material worsening of her bilateral upper extremities conditions after March 2003. He also related that there was no evidence of any neuropathies during his evaluation and neurologic examination.

On May 18, 2009 OWCP proposed to terminate appellant's compensation benefits on the grounds that the weight of medical evidence from Dr. Perry, the impartial medical examiner, established that she was no longer disabled due to the accepted condition.

By letter dated June 12, 2009, appellant's counsel disagreed with the proposal to terminate her compensation. He argued the medical reports of Drs. Kirkpatrick and Perry were deficient. Counsel also contended that OWCP failed to follow the instructions from the Board and the hearing representative regarding whether appellant's accepted work condition had materially worsened.

On July 13, 2009 OWCP found additional testing was necessary and referred appellant back to Dr. Perry for an updated report. It requested that Dr. Perry review a June 12, 2009 electromyography report.

In a July 29, 2009 supplemental report, Dr. Perry reported normal cervical range of motion; negative Adson's, Roo's and Spurling's tests; no arm atrophy; negative Phalen's test; normal motor examination; intact sensation; no impingement of the shoulders; and normal shoulder, elbow, fingers and wrist range of motion including the ability to make a fist. Diagnoses included electrophysiologic findings of delay in brachial plexus conduction of question etiology and multiple systemic complaints of obscure etiology. Dr. Perry stated that there were inconsistencies in appellant's physical examination as she could not make a fist when her fingers moved very well and there appeared to be no problems when appellant actually made a fist. He recommended that another electromyography (EMG) be performed based on the inconsistent findings on evaluation regarding the multiple neuropathies.

In an October 30, 2009 EMG, Dr. Leon H. Venier, a Board-certified physiatrist, report normal right and left MACs, low CMAP on right ulnar AE-CV, normal upper extremities and paracervical muscles and no myopathic. He related that the findings included a right elbow ulnar lesion and lower trunk and right plexus medial cord low CMAP. Dr. Venier opined that the low right plexus CMAP was not valid as it was likely due to technical problems. He concluded that appellant had milder right elbow ulnar neuropathy and "no evidence for true neurogenic thoracic outlet syndrome on either side."

On December 10, 2009 Dr. Perry reviewed the October 30, 2009 EMG and found no support for the overuse bilateral hand overuse syndrome, bilateral trigger fingers or left medial epicondylitis. He related that appellant had good finger range of motion and there was no evidence of epicondylitis on physical examination. Dr. Perry related that Dr. Venier found no evidence of true neurogenic thoracic outlet syndrome based on the EMG study that physician performed. He related that Dr. Fried's diagnoses of bilateral medial neuropathy, right brachial plexopathy, bilateral radial neuropathy, reflex sympathetic dystrophy and bilateral carpal tunnel syndrome were unsupported by the recent EMG study conducted by Dr. Venier.

By decision dated January 15, 2010, OWCP finalized the termination of her wage-loss and medical benefits effective January 17, 2010.

On February 8, 2010 appellant's counsel requested a telephonic hearing with OWCP's hearing representative, which was held on May 11, 2010.

In a February 18, 2010 report, Dr. Fried provided physical findings and opined that appellant was getting worse. Diagnoses included: right radial and median neuropathy; left median and radial neuropathy; cervical radiculopathy/brachial plexopathy; cumulative trauma disorder/repetitive strain injury; trigger finger; bilateral upper extremities sympathetically mediated pain syndrome; reflex sympathy dystrophy and reactive depression.

In a March 5, 2010 report, Dr. Guy W. Fried, a treating Board-certified physiatrist with a subspecialties in pain and spinal cord injury medicine, noted appellant's injury history and diagnoses. A physical examination revealed a positive Tinel's sign in the subclavicular and

supraclavicular regions, positive Roo's and Hunter's tests; bilateral arm altered sensation; pain on range of motion, some paraspinal spasm and minimal cervical spine tenderness. Dr. Fried diagnosed thoracic outlet syndrome, chronic pain with disability and bilateral reflex sympathy dystrophy. He opined that appellant was totally disabled from working as a result of her medical conditions. In a March 12, 2010 addendum, Dr. Fried noted that he neglected to include her bilateral trigger finger as a work-related condition, which render her totally disabled. He related that appellant's trigger fingers contributed to her disability and chronic pain along with her thoracic outlet syndrome and bilateral reflex sympathetic dystrophy.

On May 3, 2010 Dr. Jay S. Talsania, a treating Board-certified orthopedic surgeon with a subspecialty in hand surgery, reported the physical examination was difficult due to appellant's diffuse tenderness throughout her bilateral upper extremities. Physical findings included: decreased cervical range of motion; tenderness over bilateral brachial plexus, supra and infraclavicular; and a bilateral positive Tinel's sign; full range of motion of the elbow, forearm, wrists and digits. A review of a June 12, 2009 EMG showed very significant bilateral upper brachial plexus compromise and continued significant bilateral ulnar neuropathies on the right and borderline on the left. Dr. Talsania related an impression of a 10-year history of bilateral upper extremity pain and noted previous diagnoses of thoracic outlet syndrome, rotator cuff tendinitis; radial and ulnar nerve entrapment and trigger fingers.

In a May 11, 2010 report, Dr. Guy Fried noted diagnoses of thoracic outlet syndrome, bilateral reflex sympathetic dystrophy and cumulative pain disorder. He opined that appellant was totally disabled as a result of her cumulative trauma disorder and persistent pain. Dr. Fried noted that appellant sustained left medial epicondylitis, bilateral overuse hand syndrome and bilateral trigger finger due to her accepted August 14, 2000 employment injury. He related that he had reviewed the reports from Dr. Perry and Kirkpatrick and disagreed with their conclusions that appellant no longer had any continuing residuals or disability due to her accepted conditions. Dr. Fried commented upon appellant's chronic pain, arm sensitivity with trigger fingers, ongoing hand pain and inability to perform many activities by herself. According to him, these findings were consistent with a diagnosis of bilateral hand overuse syndrome and evidence that her condition has not resolved.

In a May 28, 2010 report, Dr. Scott Fried disagreed with Dr. Perry's opinion. Based on his review of the October 30, 2009 EMG, Dr. Fried found that it substantiated his diagnosis of brachial plexopathy and was contrary to Dr. Perry's conclusion. He opined, that based on his review of the objective data and medical evidence, that appellant continued to be totally disabled due to her accepted work injuries. These injuries included right radial and median neuropathy; left median and radial neuropathy; cervical radiculopathy/brachial plexopathy; cumulative trauma disorder/repetitive strain injury; trigger finger; bilateral upper extremities sympathetically mediated pain syndrome; reflex sympathy dystrophy and reactive depression.

By decision dated August 10, 2010, the hearing representative affirmed the termination of appellant's compensation benefits. She found Dr. Perry's opinion constituted the weight of the evidence in establishing that appellant's work-related condition had resolved with no residuals. The hearing representative found the additional reports from Drs. Scott Fried, Gus Fried and Talsania were insufficient to create a conflict with Dr. Perry.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.[7] After it has determined that an employee has disability causally related to her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[8] OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[9]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[10] To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.[11]

Section 8123(a) of the Act[12] provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[13] When 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.[14]

ANALYSIS

In 2003, appellant was found to have the wage-earning capacity of a Manager, Quality Control. The Board has held that once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was, in fact, erroneous.[15]

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[7] *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

[8] *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

[9] *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988); *see I.R.,* Docket No. 09-1229 (issued February 24, 2010).

[10] *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

[11] *Kathryn E. Demarsh*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003); *B.K.*, Docket No. 08-2002 (issued June 16, 2009).

[12] 5 U.S.C. §§ 8101-8193.

[13] *Id.* at § 8123(a); *Geraldine Foster*, 54 ECAB 435 (2003); *see J.J.*, Docket No. 09-27 (issued February 10, 2009).

[14] *J.M.*, 58 ECAB 478 (2007); *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002); *B.P.*, Docket No. 08-1457 (issued February 2, 2009).

[15] *Harley Sims, Jr.*, 56 ECAB 320 (2005); *Stanley B. Plotkin*, 51 ECAB 700 (2000).

The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.[16] In certain situations, however, if the medical evidence is sufficient to meet OWCP's burden of proof to terminate benefits, the same evidence may also negate a loss of wage-earning capacity such that a separate evaluation of the existing wage-earning capacity determination is unnecessary.[17] OWCP's burden to demonstrate no further disability is effectively the same, irrespective of whether there is an existing determination in place finding loss of earning capacity. While a claimant may still have unrelated medical conditions or impairments, the medical evidence must establish that the employment-related disability and medical conditions no longer exist.

OWCP initially found a conflict in the medical opinion evidence between Dr. Smith and Dr. Scott Fried on the issue of whether appellant had any continuing disability or residuals due to her accepted employment conditions and referred appellant to Dr. Kirkpatrick, a Board-certified orthopedic surgeon, to resolve the conflict. Subsequently, OWCP's hearing representative found there was no conflict in the medical opinion evidence as Dr. Smith's report insufficiently rationalized to create a conflict and, thus, Dr. Kirkpatrick could not be accorded the weight due an impartial medical examiner. Subsequently, OWCP determined there was a conflict in the medical opinion evidence between Drs. Kirkpatrick and Fried on the issue of whether appellant continued to have any work-related residuals and disability and referred her to Dr. John F. Perry, a Board-certified orthopedic surgeon, for resolution of this conflict.

The Board finds that OWCP properly determined that there was a conflict in the medical opinion evidence between Dr. Scott Fried, appellant's physician, who supported ongoing employment-related conditions and disability and Dr. Kirkpatrick, an Office referral physician, who opined that her employment-related conditions had resolved. Therefore, the Board finds that OWCP properly referred appellant to Dr. Perry, a Board-certified orthopedic surgeon for an impartial medical examination to resolve the conflict.[18]

The Board finds that OWCP properly terminated appellant's compensation benefits effective January 17, 2010 based on the reports of the impartial medical examiner, Dr. Perry. In reports dated January 14, 2009 and supplemental reports dated March 24, July 29 and December 10, 2009, Dr. Perry provided detailed narratives, which reviewed the history of injury appellant's medical treatment and diagnostic studies. He set forth normal findings on examination of her cervical spine and bilateral upper extremities. Dr. Perry described examination findings of appellant's cervical spine and bilateral upper extremities, noting negative Adson's, Roo's and Spurling's and Phalen's tests, atrophy, normal range of motion, normal motor and sensory examinations. He noted that appellant's responses on examination were inconsistent in that she indicated she was unable to make a fist when her fingers moved well and there did not appear to be anything to preclude her from doing so. Consequently,

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[16] *P.C.*, 58 ECAB 405 (2007); *Sharon C. Clement*, 55 ECAB 552 (2004).

[17] *A.P.*, Docket No. 08-1822 (issued August 5, 2009). There may exist a situation where a separate analysis would be necessary, based on preexisting conditions or other medical conditions, but that situation does not present itself in this case. Should those particular facts arise, this decision does not preclude a further consideration of the matter. *Id.*

[18] *Bryan O. Crane*, 56 ECAB 713 (2005); *J.J.*, *supra* note 13.

Dr. Perry recommended further diagnostic testing. Based on the subsequent EMG, he found no support for bilateral hand overuse syndrome, bilateral trigger fingers and left medial epicondylitis and found that the accepted conditions were not active or disabling. Dr. Perry advised that appellant was physically capable of returning to work and did not require any ongoing medical treatment for her accepted bilateral hand overuse syndrome, bilateral trigger fingers, left medial epicondylitis.

The Board finds that Dr. Perry's opinion is based on a proper factual and medical background and is entitled to special weight. Based on his review of the case record, statement of accepted facts, physical examination and normal findings on objective examination, Dr. Perry found that appellant did not have any residuals or disability causally related to her employment-related bilateral hand overuse syndrome, left medial epicondylitis and bilateral trigger fingers. His reports were based on a proper history and were well rationalized. Dr. Perry's reports constitutes the special weight of the medical opinion evidence afforded an impartial medical specialist. The Board, therefore, finds that OWCP met its burden of proof to terminate appellant's compensation benefits effective January 17, 2010.

The Board finds that the medical evidence appellant submitted subsequent to the January 15, 2010 decision terminating her benefits was insufficient to overcome the special weight accorded Dr. Perry as an impartial medical specialist regarding whether she had residuals of her accepted conditions.

In this regard, the Board finds that the March 5 and May 11, 2010 report from Dr. Guy W. Fried and May 3, 2010 report from Dr. Talsania were insufficiently rationalized to create a new conflict with Dr. Perry. None of these physicians explained how and why the bilateral upper extremity conditions they noted were employment related. As these conditions were not accepted by OWCP, appellant has the burden of proof to establish an employment relationship.[19] They provided no rationale explaining why they thought the diagnosed conditions were employment related. This lack of rationale greatly reduces the probative value of their opinions.[20] Thus, they are insufficient to create a conflict in the medical opinion evidence with Dr. Perry.

Appellant also submitted reports dated February 18 and May 28, 2010 from Dr. Scott Fried in which he disagreed with Dr. Perry's conclusions and opined that appellant continued to have residuals and disability as a result of her employment injuries. In his May 28, 2010 report, Dr. Fried stated that the October 30, 2009 EMG report supported his diagnosis of brachial plexopathy and was contrary to Dr. Perry's conclusion that it did not support this condition. Dr. Venier, the physician who performed the October 30, 2009 EMG, found no evidence supporting the diagnosis of brachial plexopathy. Thus, contrary to Dr. Fried's opinion Dr. Perry was correct in concluding the October 30, 2009 EMG report failed to support the diagnosis of brachial plexopathy. Moreover, while Dr. Fried diagnosed multiple conditions including cervical radiculopathy/brachial plexopathy, cumulate trauma disorder/repetitive strain injury, reflex sympathy dystrophy, reactive depression and bilateral upper extremities sympathetically

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[19] *See Jaja K. Asaramo,* 55 ECAB 200 (2004).

[20] *Deborah L. Beatty*, 54 ECAB 340 (2003).

mediated pain syndrome, these conditions have not been accepted by OWCP.[21] In addition, Dr. Scott Fried's reports are of diminished probative value because he has not provided any supporting rationale explaining how her condition was a result of her accepted employment injury. The Board has held opinions unsupported by rationale are entitled to little probative value.[22] In addition, Dr. Scott Fried was on one side of the conflict that had been resolved, the additional reports, in the absence of any new findings or rationale, from appellant's doctor are insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict.[23] The Board finds that Dr. Perry's opinion represents the special weight of the medical evidence as an impartial medical examiner and establishes that appellant has no employment-related disability or residuals causally related to the August 14, 2000 employment injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation effective January 17, 2010.

[21] *Alice J. Tysinger*, 51 ECAB 638 (2000); *Charles W. Downey*, 54 ECAB 421 (2003) (For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship).

[22] *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *T.M.*, Docket No. 08-975 (issued February 6, 2009).

[23] *Jaja K. Asaramo*, *supra* note 19; *see Guiseppe Aversa*, 55 ECAB 164 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 25, 2010 is affirmed.

Issued: September 6, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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