

on September 3, 2004. He stated that he was lifting a large inmate locker when he lost his balance and fell to the floor. On December 16, 2004 OWCP accepted the claim for lumbosacral, neck and thoracic sprain/strains. Appellant stopped working and began receiving compensation for wage loss.

OWCP developed the medical evidence with respect to any employment-related disability. In a report dated July 8, 2005, Dr. Norman Heyman, a Board-certified orthopedic surgeon selected as a referee physician under 5 U.S.C. § 8123(a),² opined that appellant continued to have disabling residuals of the accepted conditions.

Appellant was referred for an updated second opinion examination by Dr. David Lotman, an orthopedic surgeon. In a report dated January 3, 2008, Dr. Lotman opined that appellant had no continuing disability due to “his various strains.” He also diagnosed a cervical radiculopathy based on an April 2005 diagnostic study, and stated that appellant may have disability related to this condition if it was currently documented.

By letter dated April 25, 2008, OWCP advised appellant that it proposed to terminate compensation for wage-loss and medical benefits. There is no indication that it issued a final termination decision.

Appellant was referred for a second opinion examination by Dr. Ponnaveolu Reddy, an orthopedic surgeon. In a report dated June 29, 2009, Dr. Reddy indicated that appellant appeared to have a sebaceous cyst in the thoracic area. He opined that because of chronic cervical strain and bilateral carpal tunnel syndrome appellant could not work in his date-of-injury position.

On January 27, 2011 OWCP referred appellant for a second opinion examination with Dr. William Dinenberg, a Board-certified orthopedic surgeon. In a report dated March 1, 2011, Dr. Dinenberg provided a history, review of medical records and results on examination. He diagnosed cervical, thoracic and lumbar sprain/strains, as well as bilateral carpal tunnel syndrome. In response to questions as to whether the specific accepted conditions had resolved, Dr. Dinenberg stated, “I do feel the claimant’s thoracic sprain/strain has resolved ... Yes, I do believe the lumbar sprain/strain has resolved ... Yes[,] I do feel the claimant’s cervical sprain/strain has resolved.” He opined that appellant could not return to work in the date-of-injury position because of subjective complaints of pain, examination findings of hypersensitivity on the cervical, thoracic and lumbar spine and decreased range of motion in the cervical spine.

By letter dated April 15, 2011, OWCP advised appellant that it proposed to terminate compensation for wage-loss and medical benefits based on the medical evidence of record. Appellant was advised to submit additional evidence or argument within 30 days. In a letter dated May 9, 2011, he stated that he did not agree with the proposed termination.

² FECA provides that, if there is a 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 the examination. *Id.* at § 8123(a).

By decision dated May 19, 2011, OWCP terminated compensation for wage-loss and medical benefits effective May 20, 2011.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ In addition to a proper factual and medical background, a rationalized medical opinion is one of reasonable medical certainty and supported by medical rationale explaining the opinion.⁶

ANALYSIS

OWCP terminated compensation for wage-loss and medical benefits effective May 20, 2011 based on the report of second opinion physician Dr. Dinenberg. In the April 15, 2011 notice of proposed termination, it found that Dr. Dinenberg had provided a well-reasoned medical report that represented the weight of the evidence.

The Board finds that the opinion of Dr. Dinenberg is not well rationalized on the issue presented. The accepted conditions were cervical, thoracic and lumbar sprain/strains. Dr. Dinenberg diagnosed these conditions and provided results on examination. He found that appellant was disabled for the date-of-injury position, noting examination results. Specifically, Dr. Dinenberg noted that appellant continued to experience subjective complaints of pain, hypersensitivity of the cervical, thoracic and lumbar spine and decreased range of motion in the cervical spine. He did not adequately explain how these findings were not related to the accepted conditions, which he diagnosed. In response to questions as to whether the specific accepted conditions have resolved, Dr. Dinenberg simply stated that yes, he believed they had resolved. There was no accompanying narrative explanation for his stated conclusion. Dr. Dinenberg did not refer to results on examination, the medical or factual history, the nature of the accepted conditions or provide medical rationale to support his opinion that the accepted

³ *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

⁴ *Furman G. Peake*, 41 ECAB 361 (1990).

⁵ *J.M.*, 58 ECAB 478 (2007).

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

employment-related conditions had resolved.⁷ A rationalized medical opinion must be accompanied by medical rationale supporting the opinion offered.

The Board finds that the reports of Dr. Dinenberg does not provide a rationalized medical opinion and is of diminished probative value. OWCP has the burden of proof to terminate compensation and the Board finds it did not meet its burden of proof.

CONCLUSION

The Board finds OWCP did not meet its burden of proof to terminate compensation for wage-loss and medical benefits effective May 20, 2011.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 19, 2011 is reversed.

Issued: February 8, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁷ Compare *J.H.*, Docket No. 11-1211 (issued December 5, 2011) (where the second opinion physician provided a rationalized opinion noting the medical history, the type of injury and examination results in finding the accepted conditions had resolved).