

FACTUAL HISTORY

This case has previously been before the Board.² The Board affirmed OWCP's termination of appellant's benefits on September 16, 2009 and its determination that he did not establish any continuing residuals from his accepted employment-related neck and lumbar strain after that date. The Board noted that the medical evidence was not sufficient to overcome the special weight accorded to the impartial medical examiner, Dr. Olumuyia Paul, a Board-certified orthopedic surgeon. The facts as set forth in the Board's prior decisions are herein incorporated by reference.³

On July 9, 2013 appellant, through counsel, requested reconsideration. In an April 26, 2013 report, Dr. Philip B. Bovell, an orthopedic surgeon, noted that, since his last report of September 15, 2010, appellant returned to his medical office complaining of multiple problems and issues with regard to his workers' compensation injury. On examination, appellant complained of pain over his neck, back, both carpal tunnel areas and the shoulders. Dr. Bovell noted that appellant was still in treatment and that follow up would be necessary.

Appellant also submitted an April 24, 2013 report wherein Dr. Leonid Selya, a Board-certified orthopedic surgeon, who listed impressions of degenerative cervical spinal disease at C4-5, autofusion at C5-6 and C6-7, cervical myelopathy and radiculopathies, central cord stimulation ruled out. In a May 8, 2013 report, Dr. Selya listed his impressions as advanced degenerative cervical spinal disease C4-5 and C5-6, C6-7, cervical radiculopathy and myelopathy. He recommended that appellant be managed nonsurgically with therapy and injections. On August 29, 2013 Dr. Selya stated that his practice had treated appellant since April 2013 for aggressive degenerative changes at the C4 through C7 interspace associated with autofusion at C5-6 and C6-7. He also noted diagnoses of degenerative changes and stenotic changes in the low back area and indicated that appellant received a series of epidural injections which helped to reduce his symptoms to a certain degree. Dr. Selya stated that appellant's trouble started after an injury he sustained at work in 2006, and that after his injury he developed problems with his neck, low back and both shoulders and head. He concluded that historically and medically, appellant's condition is due to the injury he sustained at work on May 19, 2006, which resulted in aggravation of degenerative changes, onset of stenotic changes and aggressive low back and extremity symptoms.

In an October 24, 2013 decision, OWCP denied modification of its October 20, 2011 decision.

² *Id.*

³ Docket No. 09-88 (issued June 23, 2009); Docket No. 12-230 (issued September 10, 2012). On May 20, 2006 appellant, then a 57-year-old city letter carrier, filed a traumatic injury claim alleging that on May 19, 2006 he sustained head and neck pain after a vehicle door hit his head. OWCP accepted his claim for neck and lumbar strain sustained on May 19, 2006 during his federal employment.

LEGAL PRECEDENT

Under FECA, the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁴ To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.⁵

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.⁶

Section 8123(a) of FECA 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.⁷ 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.⁸

ANALYSIS

The Board finds that appellant again has not established that he had any continuing disability or residuals of his accepted employment-related lumbar and cervical strains on or after September 16, 2009, causally related to the May 19, 2006 employment injury.

The Board notes that Dr. Bovell was on one side of the conflict in medical resolved by Dr. Paul regarding the residuals from appellant's accepted injury. Dr. Bovell's report was very similar to his prior reports of record. He did not present new findings or rationale to support his opinion.⁹ A medical report from a physician on one side of a conflict resolved by an impartial medical examiner is generally insufficient to overcome the weight accorded the report of an impartial medical examiner or to create a new conflict.¹⁰ Dr. Selya opined that appellant's

⁴ 20 C.F.R. § 10.5(f).

⁵ *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

⁶ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁷ 5 U.S.C. § 8123(a); see *Geraldine Foster*, 54 ECAB 435 (2003).

⁸ See *Manuel Gill*, 52 ECAB 282 (2001); see also *M.C.*, Docket No. 14-283 (issued April 28, 2014).

⁹ See *T.B.*, Docket No. 13-799 (issued March 5, 2014); *I.J.*, Docket No. 59 ECAB 408 (2008).

¹⁰ See *R.A.*, Docket No. 13-1650 (issued February 10, 2014); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

medical conditions were historically and medically due to the employment injury of May 19, 2006. He explained that appellant's employment injury resulted in the aggravation of degenerative changes, onset of stenotic changes and aggressive low back and extremity symptoms. Dr. Selya provided only a conclusory statement on causal relationship without providing medical reasoning or rationale to support his opinion. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹¹ Accordingly, the Board finds that appellant failed to submit a report from a physician that establishes continuing employment-related residuals or disability after September 16, 2009.

CONCLUSION

The Board finds that appellant did not have any continuing employment-related residuals or disability after September 16, 2009, causally related to the May 19, 2006 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 24, 2013 is affirmed.

Issued: June 16, 2014
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

¹¹ See *Theron J. Barham*, 34 ECAB 1070 (1983); see also *L.C.*, Docket No. 12-1177 (issued August 19, 2013).