

**United States Department of Labor
Employees' Compensation Appeals Board**

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| D.G., Appellant |) | |
| |) | |
| and |) | Docket No. 17-0608 |
| |) | Issued: March 19, 2018 |
| DEPARTMENT OF THE TREASURY, |) | |
| INTERNAL REVENUE SERVICE, |) | |
| Philadelphia, PA, Employer |) | |
| |) | |

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 18, 2017 appellant, through counsel, filed a timely appeal from a January 9, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 6, 2016 because the accepted conditions had resolved with no residuals; (2) whether appellant has established continuing employment-related disability after March 6, 2016 due to the accepted conditions; and (3) whether appellant met her burden of proof to establish additional cervical and emotional conditions causally related to the September 14, 2005 employment injury.

On appeal counsel asserts that because additional conditions should have been accepted as caused by the September 14, 2005 employment injury the statements of accepted facts (SOAF) provided OWCP referral physicians and directed examiners were fatally flawed.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances outlined in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 14, 2005 appellant, then a 36-year-old full-time customer service representative, injured her right wrist, lower back, and left knee when she slipped and fell on a wet floor that day while in the performance of duty. OWCP accepted her traumatic injury claim (Form CA-1) for brachial neuritis/radiculitis and unspecified thoracic/lumbar neuritis/radiculitis. Appellant stopped work on the date of injury. OWCP paid her compensation on the periodic compensation rolls beginning on September 29, 2006.

Dr. Leonard A. Bruno, a Board-certified neurosurgeon, began treating appellant in December 2005. He diagnosed cervical sprain and herniated disc at C6-7, C7 radiculitis, sciatica, questionable nerve bruising, and lumbar sprain due to the September 2005 fall. Dr. Bruno continued to submit reports describing appellant's treatment. He referred appellant to Dr. Gregory W. Cooper, a Board-certified neurologist, who opined that appellant's neck pain and left arm paresthesias were the result of the September 14, 2005 work injury. Dr. Simon Galapo, Board-certified in anesthesia and pain medicine, began pain management in November 2006.⁴

In September 2006, OWCP referred appellant to Dr. Richard J. Mandel, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a November 2, 2006 report, Dr. Mandel concluded that she could work part-time modified duty. In September 2007, OWCP referred appellant to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion evaluation. On October 12, 2007 Dr. Hanley diagnosed aggravated cervical disc disease with whiplash syndrome, mild lumbar discomfort, tinnitus, and vertigo of the left side. He opined that the September 14, 2005 employment injury permanently aggravated a degenerative process in the neck, manifested by significant pain, limitation of motion, and unresponsiveness to normal

³ Docket No. 16-0075 (issued September 25, 2017).

⁴ An October 9, 2006 electrodiagnostic study of the upper extremities was mildly abnormal, consistent with mild nerve root irritation to either the C5-6 nerve root or to the upper brachial plexus trunk on the left.

treatment. Dr. Hanley advised that appellant could work eight hours a day with permanent restrictions.

Appellant continued seeing Drs. Bruno and Galapo. On August 14, 2008 Dr. Bruno advised that appellant could work a four-hour day of limited duty. On August 29, 2008 appellant accepted a modified customer service representative position for four hours daily.

OWCP next referred appellant to Dr. Raoul Biniaurishvili, a Board-certified neurologist. On September 3, 2008 Dr. Biniaurishvili diagnosed mild degenerative cervical spine disease, myofascitis of the cervical paraspinal musculature, and tension headaches. He advised that appellant could continue working as a customer service representative and could gradually increase her work hours.

By decision dated October 28, 2008, OWCP determined that appellant's actual earnings in the part-time modified customer service representative position fairly and reasonably represented her wage-earning capacity and reduced her compensation accordingly.

Appellant received a third-party settlement regarding the September 14, 2005 employment injury. She continued treatment with Dr. Bruno and Dr. Galapo.

In November 4 and 7, 2014 reports, Dr. Bruno noted appellant's complaint of neck pain radiating into her head with severe headaches, bilateral arm pain, and increasing vertigo. He diagnosed worsening C5-6 and C6-7 herniated disc, recommended surgery, and advised that appellant could not work from November 4, 2014 to March 1, 2015 due to the herniated discs from C5 to C7.

Appellant stopped work on November 4, 2014 and filed claims for compensation (CA-7 forms) beginning that day. Dr. Bruno continued to advise that appellant could not work.

Dr. Stephen J. Dante, a Board-certified neurosurgeon, examined appellant on February 10, 2015. He reviewed imaging studies and diagnosed cervical spondylosis with radiculopathy. Dr. Dante concluded that a treatment option would be cervical decompression and fusion surgery.

In February 2015, OWCP referred appellant to Dr. Robert Allen Smith, a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. Smith was specifically asked to identify all diagnosed conditions and explain whether they were caused by the September 14, 2005 employment injury. A SOAF addendum dated February 19, 2015 indicated that cervical sprain had also been accepted.

In a February 27, 2015 report, Dr. Smith opined that there were no objective examination findings to support appellant's complaints and nothing to suggest an ongoing soft tissue sprain of the neck or any active neuritis/radiculitis in the extremities, and that, based on multiple magnetic resonance imaging (MRI) scans, she had preexisting degenerative disease of both her neck and back. He advised that she could return to work with regard to the accepted conditions. In April 2015, OWCP specifically asked Dr. Smith to comment on whether a cervical herniated disc was due to the September 14, 2005 work injury and whether cervical spine surgery was needed. On April 8, 2015 Dr. Smith advised that, as the findings of the October 9, 2006 electrodiagnostic

study were mild and more than eight years old,⁵ there was no indication for surgery without updated studies showing a progressive neurological deficit.

In reports dated March 26 to April 3, 2015, Dr. James S. Harrop, a Board-certified neurosurgeon, noted seeing appellant for a long history of chronic neck and arm pain. He described physical examination and MRI scan findings. Dr. Harrop diagnosed cervical myelopathy and recommended anterior cervical fusion at C5-6 and C6-7. He requested surgical authorization.

On April 30, 2015 OWCP determined that a conflict in medical opinion evidence had been created between Dr. Bruno and Dr. Smith regarding whether appellant had continuing residuals of the September 14, 2005 employment injury. Accordingly, it referred appellant to Dr. William H. Simon, a Board-certified orthopedic surgeon, for an impartial medical evaluation. OWCP provided Dr. Simon with a SOAF that identified the accepted conditions. In a set of questions, Dr. Simon was asked, *inter alia*, to describe any diagnoses due to the employment injury and whether appellant continued to suffer residuals of the accepted conditions. OWCP also asked him to determine whether the recommended cervical spine surgery was medically necessary.

In a June 7, 2015 report, Dr. Simon noted his review of the SOAF and medical record. He described appellant's complaints of radiating neck and low back pain, migraine headaches, dizziness, and upper extremity tingling and numbness. Examination findings included limited cervical and left shoulder range of motion, bilateral negative straight-leg raising, and tenderness to palpation of the trapezius muscles. Dr. Simon discussed the September 4, 2014 MRI scan which was initially read as showing increased herniation at C5-6 and C6-7. He reviewed this MRI scan and interpreted it as showing a large osteophyte in the foramen on the right side at C5-6. Dr. Simon noted that no other physician, except the physician who initially read this MRI scan, had diagnosed disc herniations at these levels. He diagnosed degenerative disc disease of the cervical spine, particularly at C5-6, with mild degenerative changes at C4-5 and C6-7, which had worsened with the passage of time and were not related to the September 14, 2005 work injury.⁶ Dr. Simon indicated that the requested surgery, which was scheduled for June 8, 2015, was not necessary to treat an employment-related condition. Rather, it was necessary for appellant's underlying degenerative disc disease. He concluded that the accepted conditions had resolved.

In a May 14, 2015 report, Dr. Bruno noted treating appellant since 2005 for neck and arm pain from a cervical disc herniation that also caused cervical vertigo and migraine headaches, and that, as of November 4, 2014, appellant's disc herniations were worsening. He opined that, within

⁵ *Supra* note 3.

⁶ Appellant had several cervical spine MRI scans. An October 13, 2005 scan showed mild bulges and spurring at C4-5, C5-6, and C6-7 with possible foraminal encroachment. A September 26, 2006 scan showed bulging and spondylitic changes at C4-5, C5-6, and C6-7 with mild ventral impingement and mild multilevel encroachment. A May 16, 2007 scan noted no major change from the September 26, 2006 study. An April 12, 2011 scan showed multilevel spondylosis resulting in multilevel neural foraminal stenosis and no frank herniation. An April 13, 2012 scan revealed no significant change. A September 4, 2014 scan showed left foraminal stenosis at C6-7 due to an eccentric disc bulge, a prominent right disc herniation at C5-6, and right foraminal stenosis at C4-5. An April 14, 2015 scan demonstrated degenerative changes including tiny right disc protrusions at C4-5 and C5-6. A cervical spine computerized tomography (CT) scan that day revealed mild-to-moderate degenerative changes with no high-grade central or foraminal narrowing.

a reasonable degree of medical certainty, appellant had herniated cervical discs at C5-6 and C6-7, which required surgery to prevent further deterioration in her condition, further nerve damage, and increased symptoms of neck pain, arm pain, weakness, and numbness.

Dr. Harrop performed C5-6 and C6-7 anterior cervical discectomy and fusion on June 8, 2015.

By decision dated July 1, 2015, OWCP denied modification of the October 28, 2008 loss of wage-earning capacity determination. It found that the special weight of the medical evidence rested with the opinion of Dr. Simon, the impartial medical examiner, who determined that appellant's employment injury had resolved without residuals and that she could return to her modified part-time work, with regard to the accepted conditions.⁷

In a July 31, 2015 supplemental report, Dr. Simon determined that appellant could return to modified-duty work. He advised that her medical restrictions were due to the underlying cervical degenerative disc disease, not the employment injury.

On October 27, 2015 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits. It found that Dr. Simon's opinion that appellant no longer had disability or residuals due to the accepted conditions constituted the weight of the medical evidence.

Appellant, through counsel, disagreed with the proposed termination. He maintained that OWCP failed to properly document additional conditions that should have been accepted. Additional medical evidence submitted included treatment notes dated August 25, 2015 from Jacque Coyle, a social worker. Psychiatric evaluations dated September 22 and October 20, 2015 contained illegible signatures.

On November 11, 2015 Dr. Bruno noted current complaints of radiating low back pain, left worse than right, and left greater than right shoulder blade pain that radiated to the head. He noted negative straight-leg raising bilaterally, decreased left L5-S1 strength, and equal pinprick sensation bilaterally. Dr. Bruno opined that appellant had a decrease in neck pain, but continued with shoulder blade spasms. He recommended a slow increase in activity.

In a November 20, 2015 report, Dr. Harry A. Doyle, a Board-certified psychiatrist, described the employment injury. He reviewed SOAFs and medical evidence, and noted appellant's June 8, 2015 cervical spine surgery. Dr. Doyle also referenced psychiatric evaluations and psychotherapy notes not found in the case record before the Board. He indicated that appellant reported that she had not experienced significant relief of neck pain and continued to have persistent headaches, low back, left hip, and leg pain after the surgery, which led to increasing depression. Following mental status examination and testing, Dr. Doyle diagnosed major depressive disorder, moderate, and generalized anxiety disorder, status post cervical sprain,

⁷ On October 19, 2015 counsel appealed the July 1, 2015 decision to the Board. By decision dated September 25, 2017, the Board reversed the July 1, 2015 OWCP decision, finding that it was error for OWCP to determine on October 28, 2008 that a part-time modified position fairly and reasonably represented appellant's wage-earning capacity because she was employed full time when she was injured on September 14, 2005. Docket No. 16-0075 (issued September 25, 2017).

brachial neuritis or radiculitis, not otherwise specified, and thoracic or lumbosacral neuritis or radiculitis, not otherwise specified which, he opined, were due to the permanent physical residuals and impairments associated with the September 14, 2005 work injury. He concluded that, as a result of appellant's chronic pain and ongoing symptoms of anxiety and depression, she could not return to any full- or part-time work.

In reports dated December 22, 2015, Dr. Harrop noted seeing appellant following her cervical spine surgery. She continued to have left posterior neck muscle spasms. X-rays showed that her graft and hardware were maturing nicely. Dr. Harrop maintained that since appellant had no symptoms before the work injury and immediately after the fall had severe radicular pain, she may have some degree of a traction injury and neuropathic pain and symptoms.

On December 29, 2015 Dr. Bruno reported that appellant continued to have radiating low back pain, shoulder spasms, and migraine headaches. He noted that she was slightly more mobile.

By decision dated March 3, 2016, OWCP found that the special weight of the medical evidence rested with the impartial medical opinion of Dr. Simon who performed a thorough examination, reviewed the SOAF and all medical evidence, explained in depth why he disagreed with the diagnosis of cervical disc herniation, and advised that the accepted conditions had resolved. It also concluded that, as the weight of the medical evidence indicated that appellant had recovered from the employment injury, she was not entitled to coverage for the diagnoses of anxiety and depression. OWCP finalized the termination of all benefits, effective March 6, 2016.

Appellant, through counsel, timely requested a hearing with OWCP's Branch of Hearings and Review. Additional evidence submitted included cervical spine x-rays dated June 18, July 17, and August 31, 2015 which demonstrated a stable C5-7 anterior cervical fusion. In a March 14, 2016 report, Dr. Bruno reported appellant's chief complaint of low back pain. He indicated that her condition was no better, noting continued right arm radiculitis, radiculopathy, and persistent radiating low back pain, migraines, and headaches.⁸

Appellant did not testify at the hearing, held on October 27, 2016. Counsel asserted that OWCP misrepresented the case because the SOAF did not include all conditions that should have been accepted, and that Dr. Simon's report was not well rationalized.

By decision dated January 9, 2017, an OWCP hearing representative affirmed the March 3, 2016 decision. He found that a correct SOAF, which identified the accepted conditions, was provided to Dr. Smith and Dr. Simon. The hearing representative found the special weight of the medical opinion rested with Dr. Simon who opined that the accepted conditions had resolved and that appellant's continuing cervical symptoms were due to her degenerative cervical condition and not to the accepted conditions. He further found that appellant had not met her burden of proof to establish that additional cervical conditions or an emotional condition were employment related.

⁸ Appellant additionally submitted evidence previously of record including reports of hospitalization for the June 8, 2015 cervical spine surgery.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁹ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 6, 2016. The accepted conditions are cervical sprain, brachial neuritis/radiculitis, and thoracic/lumbar neuritis/radiculitis. OWCP determined that a conflict in medical evidence had been created between the opinions of Dr. Bruno, an attending neurosurgeon, and Dr. Smith, an OWCP referral Board-certified orthopedist, regarding whether appellant had continuing residuals of the accepted conditions. It then properly referred her to Dr. Simon, also Board-certified in orthopedic surgery, for an impartial medical evaluation.

In his June 7 and July 31, 2015 reports, Dr. Simon described the relevant facts and evaluated the course of appellant's employment-related conditions. He addressed the medical record, including his disagreement with the interpretation of the 2014 cervical spine MRI scan. Dr. Simon made his own examination findings and fully explained his conclusions, including that appellant's accepted conditions had resolved, that her continuing cervical symptoms were due to preexisting cervical degenerative disc disease, and that any restrictions were due to the underlying cervical degenerative disc disease and were not related to the employment injury.

The Board finds that Dr. Simon provided a comprehensive, well-rationalized opinion in which he clearly advised that any residuals of appellant's accepted conditions had resolved and that she could return to modified duty. He advised that the restrictions provided were due to appellant's underlying cervical degenerative disc disease and not to the accepted conditions. Dr. Simon's opinion is, therefore, entitled to the special weight accorded to impartial medical examiners and constitutes the weight of the medical evidence.¹¹

The medical evidence appellant submitted before the March 6, 2016 termination of wage-loss compensation and medical benefits was insufficient to overcome the special weight accorded Dr. Simon as an impartial medical specialist. On May 14, 2015 Dr. Bruno indicated that appellant had herniated discs at C5-6 and C6-7 that required surgery. As noted, these conditions are not employment related. On November 11 and December 29, 2015 Dr. Bruno merely described appellant's complaints and findings. The Board has long held that reports from a physician who was on one side of a medical conflict that an impartial specialist resolved, are generally insufficient

⁹ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁰ *Id.*

¹¹ *See T.W.*, Docket No. 16-1599 (issued January 11, 2017).

to overcome the special weight accorded to the report of the impartial medical examiner, or to create a new conflict.¹² Dr. Bruno had been on one side of the conflict resolved by Dr. Simon.

Furthermore, as an emotional condition had not been accepted as employment related at the time of the termination of benefits, Dr. Doyle's opinion that appellant could not return to her former job as a customer service representative or any other full- or part-time work is of diminished probative value on the issue of whether appellant continued to have residuals of the accepted cervical sprain, brachial neuritis/radiculitis, other, and unspecified thoracic/lumbar neuritis/radiculitis. Likewise, Dr. Harrop's opinion was insufficient to establish additional conditions. He did not clearly comment on and explain whether appellant had continued residuals of the accepted conditions.

The Board, therefore, concludes that Dr. Simon's opinion that appellant had recovered from the accepted conditions is entitled to the special weight accorded an impartial medical examiner,¹³ and the additional medical evidence submitted is insufficient to overcome the weight accorded him regarding whether appellant had residuals of her accepted conditions. OWCP, therefore, properly terminated appellant's wage-loss compensation and medical benefits effective March 6, 2016.¹⁴

LEGAL PRECEDENT -- ISSUE 2

Once OWCP meets its burden of proof to terminate compensation benefits, the burden shifts to the claimant to establish continuing disability causally related to the accepted conditions.¹⁵ Causal relationship is a medical issue. 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.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that the evidence of record is insufficient to establish continuing employment-related disability after the March 6, 2016 termination of compensation benefits.

Following the termination, appellant submitted cervical spine x-rays dated June 18, July 17, and August 31, 2015, which demonstrated a stable C5-7 anterior cervical fusion, and did not discuss a cause of any diagnosed condition. Medical evidence that does not offer any opinion

¹² *I.J.*, 59 ECAB 408 (2008).

¹³ *See Sharyn D. Bannick*, 54 ECAB 537 (2003).

¹⁴ *Manuel Gill*, 52 ECAB 282 (2001).

¹⁵ *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

¹⁶ *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁷

In a March 14, 2016 report, Dr. Bruno merely described appellant's complaints and advised that she was no better. As noted, he had been on one side of the conflict in medical evidence and, thus, his report is insufficient to overcome the special weight accorded Dr. Simon as the impartial medical specialist.¹⁸

As there is no medical evidence of record of sufficient rationale to establish that appellant continued to be disabled due to the September 14, 2005 work injury, she did not meet her burden of proof to establish continuing employment-related disability after March 6, 2016.¹⁹

LEGAL PRECEDENT -- ISSUE 3

An employee has the burden of proof to establish that any specific condition for which compensation is claimed is causally related to the employment injury.²⁰ Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.²¹ 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 employee.²² Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.²³

It is well established that where employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for periods of disability related to the aggravation. Where the medical evidence supports an aggravation or acceleration of an underlying condition precipitated by working conditions or injuries, such disability is compensable. However, the normal progression of untreated disease cannot be said to constitute an "aggravation" of a condition merely because the performance of normal work duties reveal the underlying condition. For the conditions of employment to bring about an aggravation of preexisting disease, the employment must cause acceleration of the disease or precipitate disability.²⁴

¹⁷ *Willie M. Miller*, 53 ECAB 697 (2002).

¹⁸ *See T.W.*, Docket No. 16-1599 (issued January 11, 2017).

¹⁹ *G.H.*, Docket No. 16-0432 (issued October 12, 2016).

²⁰ *Kenneth R. Love*, 50 ECAB 276 (1999).

²¹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

²² *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

²³ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

²⁴ *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

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.²⁵ The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination, and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.²⁶ When there exist opposing medical reports of virtually equal weight and rationale and 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 upon a proper factual background, must be given special weight.²⁷

ANALYSIS -- ISSUE 3

OWCP accepted that a September 14, 2005 fall at work caused brachial neuritis/radiculitis, thoracic/lumbar neuritis/radiculitis, and a cervical sprain.²⁸

The Board finds that appellant has not established that her diagnosed herniated cervical disc condition was causally related to the September 14, 2005 employment injury.

In April 2015, OWCP determined that a conflict in medical evidence had been created between Dr. Bruno, a treating physician, and Dr. Smith, OWCP's referral physician, regarding whether appellant had continued residuals of the September 14, 2005 employment injury. OWCP, therefore, properly referred appellant to Dr. Simon, a Board-certified orthopedic surgeon, for an impartial medical evaluation to resolve the conflict. Dr. Simon was asked whether any diagnosed condition was caused by the employment injury and whether the recommended cervical spine surgery should be authorized.

In a June 7, 2015 report, Dr. Simon noted his review of the SOAF and medical record. He described appellant's complaints and noted findings that included limited cervical and left shoulder range of motion, bilateral negative straight-leg raising, and tenderness to palpation of the trapezius muscles. Dr. Simon reviewed a September 4, 2014 cervical spine MRI scan and interpreted it as showing a large osteophyte in the foramen on the right side at C5-6. He noted that no other physician, except the physician who initially read this MRI scan, had diagnosed disc herniations. Dr. Simon diagnosed degenerative disc disease of the cervical spine, particularly at C5-6, with mild degenerative changes at C4-5 and C6-7, which had worsened with the passage of time and were not related to the September 14, 2005 work injury. He indicated that the requested surgery was not for an employment-related condition, but for appellant's underlying cervical degenerative disc disease. Dr. Simon concluded that the accepted conditions had resolved. In a July 31, 2015

²⁵ 5 U.S.C. § 8123(a); *see Y.A.*, 59 ECAB 701 (2008).

²⁶ 20 C.F.R. § 10.321.

²⁷ *V.G.*, 59 ECAB 635 (2008).

²⁸ Contrary to counsel's assertion regarding the SOAF, both Dr. Smith and Dr. Simon were provided proper SOAFs that delineated the accepted conditions and appellant's course of treatment.

supplemental report, he advised that appellant's restrictions were due to the underlying cervical degenerative disc disease and not related to the work injury.

Following Dr. Simon's report, appellant submitted a December 22, 2015 report from Dr. Harrop who performed June 8, 2015 cervical spine surgery. He opined that, since appellant had no symptoms prior to the employment injury and immediately after the fall had severe radicular pain, she could have some degree of a traction injury and neuropathic pain and symptoms. An opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship. Dr. Harrop's report is also couched in speculative terms. The Board has long held that medical opinions that are speculative or equivocal in character have little probative value. Dr. Harrop's opinion is of insufficient rationale to expand appellant's claim.

Dr. Simon had full knowledge of the relevant facts and evaluated the course of appellant's employment-related orthopedic conditions. He is a specialist in the appropriate field, and he based his opinion on a proper factual and medical history. Dr. Simon addressed the medical record, including his disagreement with the interpretation of the 2014 cervical spine MRI scan. He made his own examination findings and fully explained his conclusions that appellant's accepted conditions had resolved, that her continuing cervical symptoms were due to nonemployment-related cervical degenerative disc disease, and that the recommended cervical spine surgery was not warranted for any employment-related condition. The Board concludes that Dr. Simon's opinion is entitled to the special weight accorded an impartial medical examiner with regard to appellant's accepted orthopedic conditions. He found no basis on which to attribute any continuing cervical condition to the September 14, 2005 employment injury.

The Board further finds that appellant has not established that her diagnosed major depressive disorder and anxiety disorder conditions were causally related to the September 14, 2005 employment injury.

In his November 15, 2015 report, Dr. Doyle described the employment injury. He reviewed SOAFs and medical evidence, noting appellant's June 8, 2015 cervical spine surgery. Dr. Doyle also referenced psychiatric evaluations and psychotherapy notes not found in the case record. He noted that appellant related that she had not experienced significant relief of neck pain and continued to have persistent headaches as well as low back, left hip, and lower extremity pain following the surgery, which led to increasing depression. Following mental status examination and testing, Dr. Doyle diagnosed major depressive disorder, moderate, and generalized anxiety disorder, status post cervical sprain, brachial neuritis or radiculitis, not otherwise specified, and thoracic or lumbosacral neuritis or radiculitis, not otherwise specified which, he opined, were due to the permanent physical residuals and impairments associated with the September 14, 2005 work injury. He concluded that, as a result of appellant's chronic pain and ongoing symptoms of anxiety and depression, appellant could not return to any full- or part-time work.

The opinion of a physician supporting causal relationship must be based on a complete factual and medical background, supported by affirmative evidence, must address the specific factual and medical evidence of record, and must provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment. Dr. Doyle indicated that appellant's depression and anxiety disorder were due to the

permanent physical residuals and impairments associated with the September 14, 2005 work injury, including chronic pain. He also indicated that, based on appellant's complaints, the June 8, 2015 surgery did not ease her symptoms. This surgery, however, was not for an accepted condition. Dr. Simon, the impartial medical examiner, opined that the employment-related component of appellant's cervical condition had resolved without residuals. While Dr. Doyle referenced the September 14, 2005 employment injury in his November 20, 2015 report, he did not sufficiently explain how this injury led to appellant's psychiatric diagnoses. The Board has long held that medical opinions not containing rationale on causal relationship are of diminished probative value and are generally insufficient to meet appellant's burden of proof.²⁹

The reports with illegible signatures do not constitute competent medical evidence.³⁰ Other reports were signed by a social worker. Social workers, however, are not considered physicians as defined under section 8101(2) of FECA.³¹ These reports, therefore, do not constitute competent medical evidence.³²

Consequently, appellant has not established additional cervical and emotional conditions causally related to the September 14, 2005 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 wage-loss compensation and medical benefits, effective March 6, 2016. The Board further finds that appellant has not met her burden of proof to establish continuing employment-related disability after March 6, 2016 or additional cervical and emotional conditions causally related to the September 14, 2005 employment injury.

²⁹ See *A.M.*, Docket No. 17-1107 (issued October 17, 2017).

³⁰ See *L.W.*, Docket No. 17-0744 (issued December 12, 2017); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

³¹ 5 U.S.C. § 8101(2); see also *M.B.*, Docket No. 17-1606 (issued February 14, 2018).

³² *M.B.*, *id.*

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board