

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

T.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Denver, CO, Employer**

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**Docket No. 06-1778
Issued: August 1, 2007**

Appearances:
Gregory Hall, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 31, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' hearing representative's decision dated April 27, 2006 which affirmed the Office's May 2, 2005 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues on appeal are: (1) whether the Office properly terminated appellant's compensation benefits effective May 15, 2005; and (2) whether appellant met her burden of proof to establish that she had any disability or condition after May 15, 2005, causally related to the April 15, 1986 employment injury.

FACTUAL HISTORY

On April 15, 1986 appellant, then a 26-year-old automation mark-up clerk, filed an occupational disease claim for neck and shoulder conditions.¹ The Office accepted the claim for thoracic outlet syndrome, flexor tendon sheath ganglion cyst of the left ring finger and bilateral carpal tunnel syndrome. The Office subsequently expanded her claim to include anxiety and major depressive disorder.² Appellant was placed on the periodic rolls and received appropriate compensation.³

Appellant sought treatment from numerous physicians, including Dr. Margaret Reiland, a psychologist, and Dr. Christopher Ryan, a Board-certified psychiatrist. In a February 11, 2000 report, Dr. Reiland opined that appellant could not return to work. On February 25, 2000 she indicated that appellant was totally disabled.

The Office referred appellant for a second opinion, along with a statement of accepted facts, a set of questions and the medical record to Dr. Richard Talbott, a Board-certified orthopedic surgeon. In a June 13, 2000 report, Dr. Talbott noted appellant's history of injury and treatment and determined that her examination was negative and that there was "no objective evidence to indicate any residual." He indicated that there were no orthopedic findings to prevent appellant from returning to regular duty for eight hours per day.

In a September 29, 2000 report, Dr. Suzanne Bralliar, a treating physician and osteopath, noted appellant's history and opined that Dr. Talbott's findings were "unclear." She indicated that she found mild objective evidence in the form of decreased cervical range of motion, a difference in tenderness palpated between muscles on the right and left sides and decreased right grip strength. While concurring with Dr. Talbott that there were no orthopedic reasons precluding appellant from returning to work, Dr. Bralliar opined that appellant had thoracic outlet and repetitive motion syndromes which were not orthopedic problems. Dr. Bralliar diagnosed major depressive disorder, panic disorder associated with psychological factors and generalized anxiety disorder and advised that appellant was unable to return to work as she had from carpal tunnel and thoracic outlet syndrome.

In a November 20, 2000 decision, the Office terminated appellant's compensation. Appellant requested a hearing, which was held on March 1, 2001. On May 29, 2001 the Office hearing representative reversed the November 20, 2000 decision. The Office hearing representative found a conflict between Dr. Bralliar, who found that appellant continued to have thoracic outlet syndrome and carpal tunnel syndrome, in contrast to Dr. Talbott who found that

¹ On June 7, 1989 appellant returned to limited-duty work. She stopped work on September 6, 1989 and returned to work on September 28, 1989. Appellant returned to limited duty on May 31, 1991, stopped on March 6, 1992, and worked from September 18, 1994 until October 27, 1995, when she again stopped work.

² On January 28, 1992 appellant filed an occupational disease claim indicating that her emotional condition was related to employment factors. This case was doubled into the prior occupational disease claim for her upper extremity condition. File No. 120107365.

³ In a September 4, 2003 decision, the Office denied appellant's claim for a schedule award. On July 23, 2004 the Office hearing representative affirmed the September 4, 2003 decision.

appellant's accepted conditions had resolved. The hearing representative directed the Office to refer appellant for an impartial medical examination on the issue of whether appellant sustained carpal tunnel syndrome as a result of her work injury and whether appellant continued to suffer from the effects of any or all work-related conditions.⁴

In a June 19, 2002 report, Dr. Bralliar noted that she had released appellant to limited work "physically." However, she opined that appellant had "other issues" which were work related and she was unable to return to work.⁵

In a July 17, 2002 report, Dr. Ryan opined that appellant's "overuse in the upper extremities" was a myofascial condition involving the upper thorax and the shoulder girdles. In an August 22, 2002 report, he diagnosed thoracic outlet syndrome and opined that the compression of the thoracic outlet caused muscle tension and hypomobility which was related to her accepted condition. Dr. Ryan indicated that appellant's prognosis for returning to work was poor but she could attempt vocational rehabilitation.

On October 29, 2002 the Office referred appellant to Dr. Jeffrey J. Sabin, a Board-certified orthopedic surgeon, to resolve the conflict in medical opinion between appellant's attending physician, Dr. Bralliar, and the second opinion physician, Dr. Talbott, regarding the resolution of appellant's accepted condition and work restrictions.⁶

In a December 4, 2002 report, Dr. Sabin noted appellant's history of injury and treatment. On examination, appellant had normal posture, gait and a normal heel toe walk. He also found that appellant had decreased range of motion of the cervical spine secondary to stiffness, not severe pain, but just stiffness. Dr. Sabin also determined that appellant had flexion of 40 degrees, back extension of 45 degrees, side bending of 35 degrees on each side, rotation of 45 degrees on the left and 60 degrees on the right. For lumbar range of motion he noted that, appellant had flexion of 60 degrees and extension of 30 degrees with the side bending 30 degrees in each direction. Additionally, Dr. Sabin conducted an examination of the reflexes and determined that it was normal, along with her sensory examination. He also indicated that, during his examination of her muscle strength, appellant exhibited a "questionable effort." Dr. Sabin's findings on examination included "certain findings which could have one consider thoracic outlet syndrome or carpal tunnel syndrome; [however] there are no objective findings to back these up." He advised that there were no objective findings to support appellant's subjective complaints and that the diagnostic reports did not support a diagnosis of thoracic outlet or carpal tunnel syndrome. Dr. Sabin concluded that appellant no longer had residuals of

⁴ The Office hearing representative also directed the Office to refer appellant to a psychiatrist for an opinion on whether appellant sustained depression due to her work-related conditions. On October 23, 2002 the Office indicated that appellant's claim was accepted for major depression and consequential anxiety.

⁵ On or about June 21, 2002 the Office was notified that Dr. Bralliar took an extended leave of absence and Dr. Ryan would take over appellant's care.

⁶ On October 23, 2002 the Office found that Dr. Talbott's June 5, 2002 report created a conflict with the opinions of appellant's attending physician, Dr. Bralliar, regarding the nature and extent of any ongoing residuals of the work injury. The Office also noted that Dr. William Shaw, Board-certified in preventive medicine and a fitness-for-duty physician, found that appellant's physical condition had resolved.

the accepted condition, based on the lack of objective physical findings on examination and opined that from an orthopedic standpoint, “there is no objective evidence for disability or inability to do her work.” He opined that he could not offer an opinion related to appellant’s psychiatric condition as he was not an expert in psychiatry.

In March 12 and May 8, 2003 reports, Dr. Steven Miller, a treating psychiatrist, diagnosed recurrent major depression. He noted that appellant denied psychiatric problems or symptoms and that appellant’s mood was “eurhythmic with no signs of depression or elevation.” Dr. Miller opined that there were “no signs of psychotic process,” and opined that appellant was “relatively” stable.

On July 19, 2004 Dr. Reiland noted that appellant attended psychotherapy as needed and was able to maintain her condition but periodically had worsening symptoms. She opined that appellant’s “psychological condition will remain as is until she has significant improvement in her physical condition related to her on-the-job injury.”

In a September 14, 2004 report, Dr. Richard Sanders, a Board-certified orthopedic surgeon to whom appellant was referred by Dr. Ryan, opined that appellant’s symptoms were about the same as when he had previously examined her in 1989. He diagnosed bilateral thoracic outlet syndrome, worse on the right, cervical spine disease and possible pectoralis minor syndrome.

The Office referred appellant for a second opinion to Dr. Kenneth D. Krause, a Board-certified psychiatrist,⁷ who, in an October 24, 2004 report, noted examining appellant and advised that she “responded falsely to most of the items, suggesting she did not pay sufficient attention to item content.” Dr. Krause stated that appellant had “physical problems and reduced level of psychological functioning” and that her symptoms were exacerbated by stress. He diagnosed recurrent major depression, in partial remission, and pain disorder associated with both psychological factors and a general medical condition. Dr. Krause noted that he was not qualified to address appellant’s thoracic outlet syndrome and carpal tunnel syndrome but that, if appellant had these syndromes, “the ongoing psychiatric condition would still be considered residuals of the work injury.” He noted that appellant’s current psychological condition was minimally due to her past work experiences and she was angry and resentful about her treatment. Dr. Krause opined that, psychologically, appellant could be “reintegrated into the workforce” with a great deal of work and recommended extended vocational rehabilitation and placement in a very low stress job. He estimated that she could start working 2 hours a day twice a week and working up to no more than 30 hours a week.

On January 7, 2005 Kenneth Haithcoat, a postal inspector, provided the Office with an investigative report and memorandum summarizing video surveillance tapes of appellant from November to December 2004. Appellant performed various activities, including putting up

⁷ On July 18, 2003 the Office referred appellant, to Dr. Michael Shrift, a Board-certified psychiatrist, for a second opinion. On August 18, 2003 Dr. Shrift noted appellant’s history and diagnosed major depressive disorder, recurrent, moderate and pain disorder associated with psychological factors. He opined that appellant continued to experience her work-related conditions and that she was unable to perform her regular work. Dr. Shrift noted that, with vocational rehabilitation, appellant might be able to return to limited-duty work.

Christmas decorations and using a ladder. On January 13, 2005 the Office found that a new second opinion examination was needed due to the new evidence.

In a March 11, 2005 report, Dr. Bert Furmansky, a Board-certified psychiatrist and second opinion physician, noted appellant's history and examined her. He noted viewing video surveillance that revealed that appellant had a good range of motion with no apparent discomfort or guarding while using her upper extremities. Dr. Furmansky indicated that appellant was seen throwing a ball to her dog, hauling waste bins "more than two times" her size, setting up a holiday tree and hanging holiday lights around her home. He diagnosed major depressive disorder, recurrent, in partial remission, with symptom exaggeration highly suggestive of malingering. Dr. Furmansky also noted that appellant's treating physicians supported that appellant's condition had been in remission for several years and was not disabling. He explained that appellant's symptoms were either exaggerated or feigned as there was a discrepancy between appellant's alleged stress and disability and the documented activities seen on the video surveillance tapes. Dr. Furmansky discussed specific physical activities observed on the tapes that contradicted her statements concerning her abilities as well as previous notations made by other physicians related to exaggerated pain complaints. He noted that the diagnostic reports did not reveal any abnormalities and her objective physical findings were relatively mild in contrast to her severe incapacity based on complaints of pain. Dr. Furmansky opined that appellant's current psychological condition was not due to pain caused by her arm condition but rather was due to her underlying personality traits. He concluded that appellant exaggerated her symptoms for secondary gain as documented by her actions on the video surveillance tapes. Dr. Furmansky found that appellant could return to work in her date-of-injury position from a psychiatric standpoint but that she would have to return over a period of months. He opined that her difficulty returning to work was not due to the work injury.

On March 17, 2005 the Office proposed to terminate appellant's compensation on the basis that the weight of the medical evidence, as represented by the reports of Dr. Sabin, established that she had no residuals of the accepted physical conditions and Dr. Furmansky who supported her emotional condition was no longer related to the work injuries.

In a March 22, 2005 report, Dr. Ryan noted that appellant continued to be symptomatic and remained unemployable. In a separate report also dated March 22, 2005, Dr. Ryan noted that appellant's psychological symptoms had worsened. In a March 24, 2005 report, Dr. Miller diagnosed major depressive disorder, recurrent.

By letters dated March 24, 2005, appellant's representative requested a copy of the surveillance video, a copy of Dr. Furmansky's report and evidence regarding whether the Office followed its rotational requirements in the selection of Dr. Furmansky as a referee physician who also noted that appellant was denied due process as he was not provided with a copy of appellant's file until February 28, 2005. On March 25, 2005 appellant elected to receive civil service retirement benefits.

In a March 30, 2005 report, Dr. Ryan noted that he had not had the opportunity to review Dr. Miller's report or the videotapes but opined that the medical evidence supported objective findings on examination. He specifically discussed Dr. Sander's report of September 14, 2004

and opined that this supported objective findings but did not specifically refer to findings that he considered objective. Dr. Ryan noted that Dr. Sanders recommended release of the thoracic outlet and that a medical report from Dr. Miller indicated that appellant met with Dr. Furmansky and felt badgered by him, as he accused her of lying and she felt assaulted. He noted that appellant was upset and tearful as a result of the Office's proposal. In a separate report also dated March 30, 2005, Dr. Ryan noted that appellant showed signs of anxiety and more pain.

In an April 8, 2005 letter, appellant's representative alleged that he had insufficient time to respond to the Office's proposed termination, that the Office did not provide evidence showing that the second opinion physician was impartially selected and he had not received a copy of the videotape. He asserted that appellant did not receive the statement of accepted facts until the day of Dr. Furmansky's examination. On April 15, 2005 the representative alleged that the second opinion physician had a "deficient" statement of accepted facts because it did not describe the mechanism of injury or her physical and mental restrictions, or her attempts at vocational rehabilitation. He asserted that the statement of accepted facts did not list all of appellant's physicians, implied that her emotional injury claim was denied as it was listed as closed, improperly suggested that certain events were not compensable, improperly referenced negative medical opinions, improperly discussed her benefits and the denial of her schedule award claim and did not describe the modified duties of her 1994 clerk typist job. The representative also contended that it contained "an inflammatory description of a videotape."

On April 26, 2005 the Office asked an Office medical adviser for an opinion about whether an orthopedic surgeon was a proper specialty to consider appellant's thoracic outlet syndrome. On April 27, 2005 the Office medical adviser opined that, although generally orthopedists did not have training to allow for the determination of causation in pain for behaviorally-related issues, "Dr. Sabin has done as good a job as most anyone could do."

By decision dated May 2, 2005, the Office terminated appellant's compensation benefits effective May 15, 2005. The Office found that the weight of the medical evidence supported that she had no continuing residuals of the accepted physical or emotional conditions as a result of the injury of April 15, 1986. The Office also addressed appellant's representative's allegations regarding the statement of accepted facts and found that they were without merit. Additionally, the Office noted that appellant's representative received a copy of the videotape.⁸

Appellant requested a hearing, which was held on February 23, 2006. Her representative alleged deficiencies in the statement of accepted facts and asserted that there was a conflict in the medical evidence. The Office received an April 18, 2005 report, in which Dr. Miller noted reviewing Dr. Furmansky's report and finding that "[v]ery little of this report is persuasive." He noted that appellant would have a "substantial regression if she were to return to work" and that her "past euthymia (sic) (normal mood) reflects assiduous treatment in the context of not having to work" at the employing establishment. Dr. Miller opined that Dr. Furmansky exceeded "his expertise" and undermined reports of other physicians. Also received were copies of his previous reports diagnosing recurrent major depression. In a March 24, 2005 report, Dr. Miller asserted that Dr. Furmansky's report was "unpersuasive" and exceeded his "expertise." He

⁸ The videotape was provided to appellant's representative on April 18, 2005.

alleged that appellant would regress “if she were to return to work at the [employing establishment].” Dr. Miller continued submitting reports opining that appellant would regress if she returned to work at the employing establishment. In a February 16, 2006 report, he noted that Dr. Reiland supported his opinion that appellant could not return to the employing establishment as she had residual symptoms of a “major depressive disorder (complicated by recurring medical problems).” Dr. Miller explained that he had “always maintained that appellant’s disturbance was chronic and only added emphasis when significant setbacks occurred.

Other reports were also received prior to the hearing. On April 28, 2005 Dr. Ryan noted reviewing the surveillance videotape. In separate reports dated April 28, 2005, he noted reading Dr. Furmansky’s report and questioned the selection of a second psychiatric opinion after Dr. Krause’s examination. Dr. Ryan noted that Dr. Furmansky did not find evidence that appellant exaggerated or feigned her symptoms. He agreed, after viewing the videotape, that appellant’s capacity exceeded what she had reported but that this was “a matter of degree only, and does not mean that she has nothing wrong with her, nor that her disability is feigned.” Dr. Ryan noted that because appellant had more physical capacity than she reported “does not imply that her disability is either imagined or fraudulent.” He also noted that, while Dr. Furmansky found no physical abnormality supported by diagnostic testing, there were cases where thoracic outlet syndrome was found despite negative test results. Dr. Ryan alleged that Dr. Furmansky exceeded his expertise and did not consider the report of Dr. Sanders, the only thoracic outlet expert that examined appellant. In a May 9, 2005 report, Dr. Reiland opined that Dr. Furmansky’s report was biased and “replete with misrepresentations, inaccuracies, and innuendo.” She asserted that returning to work at the employing establishment would result in a severe psychological set back for appellant. Dr. Reiland noted that appellant was “relatively stable” and had “been complying with and was responsive to treatment interventions-with her progress predicated on her not having to return” to the employing establishment. On March 20, 2006 she noted that appellant was “doing well psychologically.” Dr. Reiland indicated that a “[r]esurgence in symptoms is primarily related to acute reminders of her experiences at the [employing establishment] and her injuries.”

By letter dated March 21, 2006, appellant’s representative alleged that the Office did not meet its burden of proof in denying benefits to appellant, as a conflict remained as the Office did not properly use the rotation system to select Dr. Sabin. He alleged that the Office bypassed dozens of specialists who were closer to appellant’s zip code.

By decision dated April 27, 2006, the Office hearing representative affirmed the Office’s May 2, 2005 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁹ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation

⁹ *Curtis Hall*, 45 ECAB 316 (1994).

without establishing either that the disability has ceased or that it is no longer related to the employment.¹⁰

The Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.¹¹ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹²

ANALYSIS -- ISSUE 1

With regard to appellant's orthopedic condition, the Office determined that a conflict of medical opinion existed regarding the nature and extent of any ongoing residuals of the work injury and appellant's ability to work based on the opinions appellant's physicians, Dr. Bralliar, an osteopath, who found that appellant could not return to work and Dr. Talbott, a Board-certified orthopedic surgeon and second opinion physician, who found that appellant could work. Therefore, the Office properly referred appellant to an impartial medical examiner, Dr. Sabin.

The Board finds that Dr. Sabin's December 4, 2002 report is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight in establishing that residuals of appellant's employment injury had ceased. Dr. Sabin provided an extensive review of appellant's medical history, reported his examination findings and determined that there were no objective findings to correspond with appellant's subjective complaints. He found no objective evidence of any work-related disability. Dr. Sabin's examination findings were essentially normal and he noted that appellant's efforts were questionable in some areas. While he noted that there were "certain findings which could have one consider thoracic outlet syndrome or carpal tunnel syndrome, there are no objective findings to back these up." Dr. Sabin gave a reasoned opinion that despite appellant's subjective complaints there were no current objective findings or "evidence for disability or inability to do her work." In these circumstances, the Office properly accorded special weight to the impartial medical examiner's December 4, 2002 findings.

When an impartial medical specialist is asked to resolve a conflict in medical evidence, his opinion, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹³ The Board finds that Dr. Sabin's report represents the weight of the medical evidence and established that there were no ongoing objective findings or residuals of the accepted orthopedic conditions.

¹⁰ *Jason C. Armstrong*, 40 ECAB 907 (1989).

¹¹ 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

¹² *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

¹³ *See supra* note 11.

Subsequent to the evaluation by Dr. Sabin and prior to the termination of benefits, the Office received additional reports from Drs. Reiland and Ryan. However, they merely reiterated previously stated findings and conclusions regarding appellant's condition. As the physicians had been on one side of the conflict in the medical opinion that the impartial specialist resolved, the treating physician's reports were insufficient to overcome the special weight accorded the impartial specialist or to create a new medical conflict.¹⁴ They included a March 30, 2005 report, in which Dr. Ryan noted that Dr. Sanders recommended a release of the thoracic outlet and that the medical evidence supported objective findings; however, these additional reports do not contain any new information or rationale sufficient to overcome or create a new conflict with the opinion of Dr. Sabin.

Also prior to the termination of compensation, the Office also received a September 14, 2004 report from Dr. Sanders, who diagnosed thoracic outlet syndrome and opined that appellant's symptoms were the same as when he examined appellant in 1989. However, Dr. Sanders did not provide any rationale to support his findings or an opinion regarding appellant's residuals or ability to work. Thus his report is of little probative value.¹⁵

Regarding the termination of benefits for appellant's emotional condition, the Office referred appellant for a second opinion examination with Dr. Furmanky, a Board-certified psychiatrist. In a report dated March 11, 2005, Dr. Furmanky noted appellant's history and the video surveillance, which revealed that appellant had good range of motion with no apparent discomfort or guarding while using her upper extremities. He diagnosed major depressive disorder, recurrent, in partial remission, with symptom exaggeration highly suggestive of malingering. Dr. Furmanky also advised that appellant's treating physicians supported that appellant's condition had been in remission for several years and was not disabling. He determined that appellant's symptoms were either exaggerated or feigned as there was a discrepancy between appellant's alleged stress and disability and the documented activities seen on the video surveillance. Dr. Furmanky discussed specific physical activities observed on the tapes that contradicted her statement concerning her abilities as well as previous notes by other physicians related to exaggerated pain complaints. He also noted that the diagnostic reports did not reveal any abnormalities and explained that his objective physical findings were relatively mild in contrast to her severe incapacity based on her pain complaints. Dr. Furmanky opined that appellant's current psychological condition was related to her underlying personality traits and not to any upper extremity condition. He explained that appellant exaggerated her symptoms for secondary gain as documented by her actions on the video surveillance tapes and opined that appellant was capable of working in her date-of-injury position from a psychiatric standpoint. Dr. Furmanky further explained that appellant's difficulty returning to work was not related to the work injury. The Board finds that the report of Dr. Furmanky is rationalized and is sufficient to carry the weight of the evidence.

While appellant submitted several reports from his treating physicians, the most recent report included a March 24, 2005 report, in which Dr. Miller diagnosed major depressive

¹⁴ *Barbara J. Warren*, 51 ECAB 413 (2000); *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁵ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

disorder, recurrent. Dr. Miller merely provided a diagnosis, with no opinion on causal relationship. Medical evidence which does not offer any opinion on causal relationship is of limited probative value.¹⁶ Other reports submitted by appellant's treating psychiatrists did not provide a rationalized opinion that any of appellant's existing conditions were causally related to the accepted conditions. Thus, these reports are of diminished probative value and insufficient to create a conflict with the opinion of Dr. Furmanky.

The Board finds that the Office properly terminated appellant's compensation benefits on the grounds that she had no residuals or disability causally related to the accepted conditions.

The Board also notes that appellant's attorney alleged that the statement of accepted facts was deficient as not all of appellant's physicians were listed. However, there is no requirement that all physicians must be listed. The statement of accepted facts must include the date of injury, the claimant's age, the job held on the date of injury, the employer, the mechanism of injury and the claimed or accepted conditions.¹⁷ Additionally, appellant's attorney alleged that a conflict remained as the Office did not properly use the rotation system to select Dr. Sabin. However, his arguments do not show that Dr. Sabin was improperly selected. The Office procedures provide that, unlike selection of second opinion examining physicians, selection of referee physicians is made by a strict rotational system using appropriate medical directories.¹⁸ The Board finds that appellant has not submitted any evidence or argument to support that the impartial medical examiner was improperly selected.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.¹⁹

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

¹⁶ *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.12 (June 1995). See also *Darletha Coleman*, 55 ECAB 143 (2003).

¹⁸ See *Charles M. David*, 48 ECAB 543 (1997). See also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.7 (May 2003); *Miguel A. Muniz*, 54 ECAB 217 (2002); *Albert Cremato*, 50 ECAB 550 (1999).

¹⁹ *Talmdge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.²⁰

ANALYSIS -- ISSUE 2

Following the termination of compensation, with regard to appellant's orthopedic condition, she submitted additional reports from Dr. Ryan. In reports dated April 28, 2005, Dr. Ryan noted that he had reviewed the videotape surveillance, and opined that, while appellant demonstrated more physical capacity than she reported to her examiners, it did not imply that her disability was "feigned." He also questioned the selection of Dr. Furmanksy, and advised that thoracic outlet syndrome has been found despite a lack of objective findings. However, Dr. Ryan did not provide any rationale to explain why or whether appellant's accepted orthopedic conditions continued and did not identify objective findings to support the diagnoses given or provide a rationalized opinion causally relating these conditions to the accepted employment injury. Thus, the reports received from him subsequent to the termination of appellant's compensation are insufficient to establish an ongoing condition and disability causally related to the accepted work injuries. Dr. Ryan did not provide any findings and rationale sufficient to overcome or create a new conflict with the opinion of Dr. Sabin.

Following the termination of compensation, with regard to appellant's psychological condition, the Office received additional reports from Drs. Miller and Reiland. They included Dr. Miller's March 24 and April 18, 2005 reports which indicated that Dr. Furmanksy had exceeded his expertise, and that appellant would regress if she returned to the employing establishment and an April 27, 2005 report diagnosing major depressive disorder. They also included a February 16, 2006 report repeating his previous diagnoses and opined that appellant's condition was chronic. However, Dr. Miller did not provide any objective findings or medical reasoning to support his opinion that appellant had a continuing work-related condition.

Dr. Reiland submitted several reports dating from May 9, 2005 to March 20, 2006. However, she merely opined that appellant's symptoms were related to reminders of her experiences with the employing establishment. However, she did not offer any findings or rationale to support her opinion, and thus her reports are of limited probative value.

Consequently, appellant has not established that her condition on and after May 15, 2005 was causally related to her accepted employment injury.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective May 15, 2005. Further, the Board finds that appellant did not meet her burden of proof to establish that she had any injury-related disability or residuals after May 15, 2005 causally related to the accepted employment injuries.

²⁰ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2006 decision of the Office of Workers' Compensation Programs' hearing representative is affirmed.

Issued: August 1, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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