

FACTUAL HISTORY

On June 17, 2003 appellant, then a 47-year-old transportation security screener, sustained traumatic injury when she struck her forehead on the rollers of an “L3 machine.” She stopped work on June 17, 2003.¹ Emergency room treatment notes dated June 22 to 26, 2003 indicate that appellant was treated for a head contusion and severe headaches. Appellant was advised not to work. On August 18, 2003 Dr. Robert T. Williams, Board-certified in emergency medicine, noted that, on June 17, 2003, appellant was screening baggage at work and hit her head on metal rollers of the baggage screening machine. He diagnosed post-traumatic headache and lumbar strain and noted that the jarring impact with the machine also caused low back pain; he recommended further treatment with a neurologist. The Office accepted the claim for headache and lumbar strain. Appellant received appropriate compensation benefits.

The Office received an August 5, 2003 e-mail from Carolyn Douglas, a human resources specialist, who received an anonymous telephone call advising that appellant had a history of headaches and was already being treated for them. The caller also advised that appellant had been working as a realtor during the time she was supposedly unable to work and had attended pool tournaments at night.

In an October 9, 2003 report, Dr. Melvin Greer, a treating physician and Board-certified neurologist, noted that appellant was lifting a bag on June 17, 2003 and struck her head on a conveyor belt. Appellant was on the ground for a brief period of time but was able to get up. Dr. Greer noted that she did not remember the details of what happened, but she drove home after her workday was finished. Two hours later, appellant began having a headache. She denied having had any significant head pain in the past, although she acknowledged experiencing headaches. Appellant attributed her head pains to stress. Dr. Greer advised that her sleeping and eating patterns contributed to her head pain and that he saw no abnormality when she ran or hopped on each leg. A June 22, 2003 computerized tomography (CT) scan revealed no brain abnormality or evidence of process either in the scalp or skull. Dr. Greer could not account for appellant’s persistent head pain in relation to the June 17, 2003 trauma. He stated that appellant had a predisposition for migraines and that she “might have had an exacerbation of a migraine with a possible increase in frequency that I would accept for about two or three months.” Dr. Greer advised that appellant’s current disability was not work related. He opined that appellant had no impairment and no disability due to the June 2003 event. In an addendum, Dr. Greer stated that appellant had called him later to indicate that there was “something wrong with the right side of her body from her waist to her knee because she had pain there.” Appellant indicated that she had trouble concentrating and explained that her poor sleep pattern was due to head pain and other complaints. However, Dr. Greer did not believe that anything further was needed.

On October 23, 2003 the Office proposed to terminate appellant’s compensation on the grounds that the medical evidence established that she had no continuing impairment or work-related disability as a result of her June 17, 2003 employment injury.

¹ The record reflects that appellant had a subsequent injury on April 12, 2004; however, that matter is not before the Board.

The record reflects that appellant subsequently submitted CA-7 forms for disability, a copy of Dr. Greer's October 9, 2003 report and a copy of the June 22, 2003 CT scan. The Office also received emergency room treatment records which indicated that a CT scan of the head was negative.

On October 27 and November 9, 2003 appellant contended that she remained disabled, that she did not experience constant headaches prior to her work injury and requested authorization to be treated by another physician. She alleged that her leg was causing her problems and requested that she be referred for a second opinion examination. On November 14, 2003 the Office advised appellant that she did not identify a particular doctor or specialty in regard to her request to be referred for a second opinion examination. Appellant was advised that the evidence did not support authorizing a new physician or referral for a second opinion.

By decision dated December 4, 2003, the Office terminated appellant's compensation for wage loss and medical payments effective that day. The Office found that appellant did not submit any medical documentation to negate the opinion of her attending physician, Dr. Greer. The Office found that the weight of the medical evidence supported that appellant had no continuing disability or need for medical care as a result of the injury of June 17, 2003. Appellant was advised that the evidence did not support a diagnosed right leg condition related to the accepted injury of June 17, 2003.

On December 23, 2003 appellant requested a hearing, which was held on October 18, 2006. She alleged that the Office referred her to see Dr. Greer, after her attempts to obtain authorization to see another physician recommended by Dr. Williams failed. Appellant submitted copies of previously submitted reports and December 13, 2004 treatment notes which were illegible.

Appellant submitted November 15, 2004 to July 22, 2005 treatment notes from Dr. Jonathan Greenberg, a Board-certified neurologist. On November 17, 2003 she hit her head on a metal baggage conveyor belt at work and fell to the ground. Appellant began having headaches and four to five days later was diagnosed with a cerebral concussion. Dr. Greenberg reported that appellant had a second work injury on April 12, 2004, when she pulled a muscle in her neck and back. He diagnosed cervical spondylosis at C3-4, C4-5 and C5-6 and a small right-sided disc herniation at C4-5 and a small left-sided disc herniation at C5-6 with mechanical spine pain. Dr. Greenberg diagnosed a right-sided L5 lumbosacral radiculopathy and advised that lumbar disc herniation needed to be ruled out. In a July 22, 2005 report, he again stated that appellant sustained injury on November 17, 2003. Dr. Greenberg advised that appellant sustained a mechanical injury to her facet joints and discs in the cervical spine that resulted in cervical mechanical spine pain with neck pain and headaches and a transient injury to her right L5-S1 nerve roots with right-sided lumbosacral radiculopathy. He opined that appellant "most likely sustained an aggravation of her cervical spine preexisting conditions as a result of her work injuries, but only a temporary exacerbation of her lumbar condition, with subsequent resolution of those lumbar spine findings." Dr. Greenberg advised that appellant had cervical spondylosis with mechanical spine pain. He stated that it was "possible that the cervical spondylosis at the upper cervical spine levels, particularly at C3-4 and C4-5 can be contributing to causing headaches with regards to muscles attached to the skull base in the occipital region."

At the hearing appellant's representative contended that the Office did not accept the full extent of appellant's injuries. Although the Office accepted the claim for headaches, the hospital records revealed that she sustained a concussion and severe headaches. Appellant's representative noted that appellant did not have a history of migraines prior to the injury, and denied that she played pool or worked during the period of disability. Additionally, she provided the Office with copies of a second opinion examination by Dr. Barry Lotman, a Board-certified orthopedic surgeon, and requested that the claims be combined.² On October 19, 2005 Dr. Lotman noted that appellant sustained an injury on April 12, 2004. He noted that treatment records of Dr. Greenberg reflected that appellant had an earlier injury when she stuck her head at work and developed a concussion. Dr. Lotman stated that appellant felt that the injury of 2004 caused her right knee pain. He advised that she was not working and had not worked since April 2004. Dr. Lotman diagnosed chondromalacia of the patella, right knee and disc herniation at C5-6. He completed a work capacity evaluation and found that appellant was able to work for eight hours per day, with restrictions. In a November 1, 2005 report, Dr. Lotman opined that appellant's right knee symptoms began on April 12, 2004, and caused an aggravation of preexisting symptoms, which continued. He noted that there was no objective evidence of cervical spine dysfunction on examination.

By decision dated December 18, 2006, the Office hearing representative affirmed the December 4, 2003 decision.

By letter dated February 28, 2007, appellant requested reconsideration. She contended that, on June 22, 2003, she was "knocked out." Appellant denied that she worked until the end of her shift. She also referred the Office to Dr. Lotman's second opinion report and denied playing pool or working for a real estate office after her injury. The Office also received a copy of the June 22, 2003 treatment notes and aftercare instructions.

By decision dated May 21, 2007, the Office denied appellant's request for reconsideration without a review of the merits finding that her request was insufficient to warrant further review of its prior decisions.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴

² The record indicates that he examined appellant with regard to the April 12, 2004 claim.

³ *Curtis Hall*, 45 ECAB 316 (1994).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989).

ANALYSIS -- ISSUE 1

The Board finds that the weight of the medical evidence is represented by Dr. Greer, appellant's treating physician and a Board-certified neurologist, who submitted a well-rationalized opinion based on a complete and accurate factual and medical history.

In an October 9, 2003 report, Dr. Greer noted an accurate history of injury, that on June 17, 2003 appellant was lifting a bag and struck her head on the conveyor belt. He stated that she denied having a history of significant head pain, but acknowledged experiencing headaches. Dr. Greer related appellant's belief that her head pains from the prior year were stress related and had subsided. He reviewed the results from a June 22, 2003 CT scan, which revealed no brain abnormality or evidence of process either in the scalp or skull. Dr. Greer stated that he could not account for appellant's persistent head pain in relation to the June 17, 2003 trauma. He noted that appellant had a predisposition for migraines and opined that she might have had an exacerbation of migraines, with a possible increase in their frequency; however, he explained that they would have subsided after two or three months. Dr. Greer found that her current disability was not work related. He concluded that appellant did not have any impairment or disability due to the June 2003 injury. Dr. Greer noted that appellant subsequently contacted him later to indicate that there was something wrong with the right side of her body. He reiterated, however, that further medical treatment was not needed.

The Office properly terminated appellant's compensation benefits based on Dr. Greer's opinion. There is no other medical evidence to contradict his findings. The Board finds that Dr. Greer's report established that appellant ceased to have any disability or residuals causally related to the accepted injury, thereby supporting the Office's December 4, 2003 termination of her compensation benefits.

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 she had an employment-related disability, which continued after termination of compensation benefits.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

⁵ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

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

ANALYSIS -- ISSUE 2

Following the termination of compensation, appellant submitted additional medical evidence which included copies of emergency room records from June 22, 2003 and December 13, 2004 treatment notes which were illegible. She also submitted the June 22, 2003 CT scan, which was reported as normal. However, these records do not provide any opinion regarding the cause of appellant's condition or to establish continuing disability and residuals due to the accepted injury. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁷

Appellant also submitted treatment notes from Dr. Greenberg. However, he did not list an accurate date of injury, as he noted that appellant was injured on November 17, 2003. It is well established that medical reports must be based on a complete and accurate factual and medical background. Medical opinions based on an incomplete or inaccurate history are of diminished probative value.⁸ The Board notes that appellant's claim was accepted for headache and lumbar strain. Dr. Greenberg, however, opined that appellant had cervical spondylosis at C3-4, C4-5 and C5-6, a small right-sided disc herniation at C4-5 and a small left-sided disc herniation at C5-6 with mechanical spine pain, right-sided L5 lumbosacral radiculopathy and noted that lumbar disc herniation needed to be ruled out. He did not explain how these conditions arose as a result of her June 17, 2003 employment injury. In his July 22, 2005 reports, Dr. Greenberg stated that it was "most likely" that appellant sustained an aggravation of her cervical spine preexisting conditions as a result of her work injuries. He further opined that it was "possible that the cervical spondylosis at the upper cervical spine levels, particularly at C3-4 and C4-5 can be contributing to causing headaches with regards to muscles attached to the skull base in the occipital region." Dr. Greenburg's opinion on causal relationship is speculative. He did not explain how appellant's work-related conditions caused disability. As his reports were speculative they are of limited probative value.⁹

Appellant also submitted reports dated October 19 and November 1, 2005 from Dr. Lotman, who addressed a knee injury which occurred on April 12, 2004. Dr. Lotman did not address the June 17, 2003 injury in relation to her ability to work on or after December 4, 2003. Furthermore, he completed a work capacity evaluation and opined that appellant was able to work for eight hours per day, with restrictions. The Board notes that he did not opine that appellant was disabled or had residuals of her June 17, 2003 work injury after December 4, 2003.

None of appellant's physicians provided sufficient medical rationale explaining how and why the accepted June 17, 2003 injury caused or contributed to any disability after December 4, 2003. Appellant has failed to meet her burden of proof.

⁷ *Michael Smith*, 50 ECAB 313 (1999).

⁸ *Douglas M. McQuaid*, 52 ECAB 382 (2001).

⁹ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

LEGAL PRECEDENT -- ISSUE 3

Under section 8128(a) of the Federal Employees' Compensation Act,¹⁰ the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the Office; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office].”¹¹

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.¹²

ANALYSIS -- ISSUE 3

Appellant disagreed with the termination of her benefits and requested reconsideration asserting that she continued to have medical residuals related to her accepted injury. The underlying issue is medical in nature, whether appellant continued to experience residuals from her accepted work-related injury of June 17, 2003. However, appellant did not submit any relevant or pertinent new evidence not previously considered by the Office. Appellant submitted copies of previously submitted treatment notes and aftercare instructions. However, this evidence was already of record and is cumulative in nature. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹³

Appellant alleged that she was knocked out on June 22, 2003. The Board notes that this argument is not relevant, as the Office accepted her claim for headache and a lumbar strain. The issue of whether appellant continues to be disabled after December 4, 2003 is medical in nature. Her contentions do not constitute a basis for reopening her case.

¹⁰ 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.606(b).

¹² 20 C.F.R. § 10.608(b).

¹³ See *Betty A. Butler*, 56 ECAB 545 (2005).

Appellant did not provide any relevant and pertinent new evidence to establish that she continued to be disabled due to her accepted employment-related conditions. Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously submitted. Therefore, the Office properly denied her request for reconsideration.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective December 4, 2003. The Board finds that appellant did not meet her burden of proof to establish that she had any injury-related disability or residuals after December 4, 2003 causally related to the June 17, 2003 employment injury. The Board also finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).¹⁴

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2007 and December 18, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 13, 2008
Washington, DC

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

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

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

¹⁴ On appeal, appellant submitted new evidence. However, the Board may not consider new evidence on appeal as its jurisdiction is limited to the evidence that was before the Office at the time of the Office's final decision. *See* 20 C.F.R. § 501.2(c).