

equipment.¹ He stopped work on February 19, 2002. The Office accepted that appellant sustained an employment-related aggravation of the inflammatory arthritis of his feet and knees and paid compensation for total disability.

Appellant received treatment for his lower extremity condition from Dr. Manfred Schwarz, an osteopath. In several notes dated beginning in mid 2002 Dr. Schwarz indicated that appellant was unable to work. In a report dated January 29, 2003, Dr. Schwarz noted that, although there was a slow improvement in the arthritic swelling of his lower extremity joints, appellant experienced periods of increased symptom which limited his activity. He stated that appellant was not able to return to work.²

The record also contains a February 7, 2003 report of Dr. Joseph J. Weiss, a Board-certified internist specializing in rheumatology to whom appellant was referred by the employing establishment. Dr. Weiss reported his findings on examination and diagnosed reactive arthritis. He concluded that appellant was not able to perform any type of work.

In a report dated October 22, 2002, Dr. Schwarz indicated that various work restrictions were necessitated by the accepted employment injury. He stated that appellant could only engage in walking or lifting for one hour per day, standing for two hours per day and sitting for four hours per day.³

In another report dated October 22, 2003, Dr. Schwarz noted that appellant had a history of severe fatigue, and pain and swelling of the knees and ankles. He noted that appellant exhibited swelling on examination and diagnosed reactive arthritis due to the accepted employment injury.⁴ Dr. Schwarz indicated that appellant was disabled from March 19, 2002 to December 22, 2003.

In November 2003 the Office referred appellant to Dr. Jerold W. Shagrin, a Board-certified internist specializing in rheumatology, for an evaluation of his condition. In a report dated December 2, 2003, Dr. Shagrin discussed appellant's factual and medical history and reported his findings on examination. He noted that x-rays of appellant's feet and knees were normal and stated, under the heading "extremities," that "pulses are 1+ and equal." Dr. Shagrin noted that he felt that appellant had "very little objective medical findings" related to the accepted work-related condition, that his main complaint of fatigue was subjective, and the physician found no objective evidence of why appellant could not return to work. He stated that the aggravation of his preexisting nonwork-related condition had ceased but that he could not provide a definite date of when it ceased. Dr. Shagrin indicated that appellant had reactive arthritis which was a life-long illness and noted, "There is no objective evidence at this time of any activity of his arthritis." In a form report dated December 23, 2003, he indicated that

¹ Appellant indicated that he first became aware of his condition on January 15, 2002.

² Dr. Schwarz also noted that appellant had tested positive for Lyme disease.

³ Dr. Schwarz indicated that appellant would be able to work eight hours per day in February 2003.

⁴ Dr. Schwarz listed a date of injury of January 15, 2002, *i.e.*, the date that appellant indicated he first became aware of the condition that was accepted by the Office.

appellant was capable of working 4 to 6 hours without restrictions and that, after 60 days, he would be able to work 8 hours per day without restrictions.

In a letter dated January 5, 2004, the Office requested that Dr. Shagrin provide clarification of his December 2 and 23, 2003 reports, particularly with regard to his recommendation of a gradual return to work.

By letter dated January 23, 2004, the Office advised appellant of its proposed termination of his disability compensation and medical benefits based on the December 2 and 23, 2003 reports of Dr. Shagrin.

In a supplemental report dated January 30, 2004, Dr. Shagrin stated that appellant's fatigue was not directly related to the accepted employment injury and indicated that he recommended a gradual return to work due to the fact that appellant had been off work for an extended period and complained of fatigue.

By decision dated February 24, 2004, the Office terminated appellant's wage-loss compensation and medical benefits effective that date, finding that the reports of Dr. Shagrin established that he no longer had residuals of his accepted employment injury.

On September 12, 2004 appellant requested reconsideration of his claim and submitted a February 27, 2004 report in which Dr. Schwarz stated that he continued to have arthritis and fatigue and was disabled from work.

By decision dated October 14, 2004, the Office denied modification of its February 24, 2004 decision.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,⁵ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁶ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁷ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

ANALYSIS

The Office accepted that appellant sustained an employment-related aggravation of the inflammatory arthritis of his feet and knees and paid compensation for total disability. By

⁵ 5 U.S.C. §§ 8101-8193

⁶ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁷ *Id.*

⁸ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

decision dated February 24, 2004, the Office terminated appellant's disability compensation and medical benefits effective that date based on the reports of Dr. Shagrin, a Board-certified internist specializing in rheumatology.

The Board finds that there is a conflict in the medical evidence between Dr. Shagrin, the referral physician, and Dr. Schwarz, an attending osteopath, regarding whether appellant continued to have residuals of his employment injury after February 24, 2004.⁹

In reports dated December 2 and 23, 2003, and January 30, 2004, Dr. Shagrin indicated that appellant had very few objective findings and concluded that his accepted employment injury had resolved on an unspecified date. He indicated that appellant had reactive arthritis which was a life-long illness but noted that there was no sign of present activity. Dr. Shagrin stated that appellant was capable of working 4 to 6 hours without restrictions and that, after 60 days, he would be able to work 8 hours per day without restrictions. He indicated that this gradual return to work was prophylactic in nature and necessitated by nonwork-related fatigue and inactivity.

In contrast, Dr. Schwarz concluded in an October 22, 2003 report that appellant continued to have reactive arthritis in connection with the accepted employment injury. He stated that appellant was disabled from March 19, 2002 to December 22, 2003. In another report dated October 22, 2002, Dr. Schwarz stated that the various work restrictions were necessitated by the accepted employment injury.

The Board finds that since the Office relied on the reports of Shagrin to terminate appellant's compensation benefits effective February 24, 2004 without having resolved the existing conflict. The Office failed to meet its burden of proof in terminating appellant's benefits.¹⁰

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation effective February 24, 2004 due to a continuing conflict in the medical evidence.

⁹ Section 8123(a) of the Act provides in pertinent part: "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." 5 U.S.C. § 8123(a). When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence. *William C. Bush*, 40 ECAB 1064, 1075 (1989).

¹⁰ See *Gail D. Painton*, 41 ECAB 492, 498 (1990); *Craig M. Crenshaw, Jr.*, 40 ECAB 919, 922-23 (1989).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' October 14 and February 24, 2004 decisions are reversed.

Issued: July 13, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member