

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

V.B., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Brecksville, OH, Employer)

**Docket No. 08-668
Issued: July 23, 2008**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 9, 2008 appellant, through her attorney, filed a timely appeal from the May 15 and December 13, 2007 decisions of the Office of Workers' Compensation Programs terminating her compensation and medical benefits. 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 are: (1) whether the Office met its burden of proof to justify termination of appellant's compensation and medical benefits effective May 15, 2007; and (2) whether appellant established that she had any continuing disability relating to her accepted conditions after May 15, 2008.

FACTUAL HISTORY

On March 31, 2006 appellant, then a 57-year-old pharmacy technician, sustained injury to her lower back and left hip in the course of her federal employment. She indicated that her

injury occurred when she attempted to sit on a chair with wheels in the employee lunchroom, which rolled out from underneath her, causing her to fall on her tailbone. By letter dated May 26, 2006, appellant's claim was accepted for back sprain of the lumbar region, aggravation of degeneration of the cervical spine and aggravation of osteoarthritis of the left hip.

In a note received by the Office on April 17, 2006, Dr. P.L. Soni, appellant's treating Board-certified orthopedic surgeon, indicated that appellant could return to work on April 18, 2006 with restrictions of working no more than four hours a day. In a progress note dated June 7, 2006, Dr. Soni indicated that she could work six hours a day. He noted that appellant's neck and back continued to be tender. In a July 19, 2006 report, Dr. Soni noted that appellant continued to be symptomatic. He stated that, she "can do pretty much everything she was doing prior to the injury, except it will be a little painful." Dr. Soni advised that appellant may need more breaks and to sit more, but that, with regard to bending, turning, twisting and weight restrictions, she had reached 90 percent of her preinjury status. He discharged her from his care. On July 20, 2006 appellant returned to limited-duty work eight hours a day.

By letter dated December 6, 2006, the Office referred appellant to Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, for a second opinion. In a report dated January 31, 2007, Dr. Kaffen advised that there were no objective findings to establish that appellant continued to experience residuals of the accepted conditions. He found that she was able to return to work as a pharmacy technician without restrictions and that no further treatment was necessary. Dr. Kaffen noted that there were no objective findings on examination of the cervical spine and that the objective findings pertaining to the left hip were what one would expect with preexisting osteoarthritis of the hip.¹

By letter dated February 12, 2007, the Office asked Dr. Soni to respond to Dr. Kaffen's report. On February 19, 2007 Dr. Soni responded noting that he agreed with Dr. Kaffen's assessment and that appellant was capable of performing her position as pharmacy technician in an unrestrictive manner. He stated that appellant's prognosis was good.

In a decision dated April 11, 2007, the Office found that the weight of the medical evidence demonstrated that appellant no longer had any disability or residuals due to her accepted work-related injuries of March 31, 2006. It proposed terminating her wage loss and compensation benefits. Appellant did not submit any evidence to the contrary within 30 days.

By decision dated May 15, 2007, the Office terminated appellant's compensation benefits effective that date.

¹ Dr. Kaffen noted that an examination of the lumbar region of appellant's back revealed mild tenderness and mild muscle guarding. The range of motion was flexion to 50 degrees with pain, extension to 10 degrees, right and left lateral bending 10 degrees each. Dr. Kaffen noted that the straight leg raising test was negative bilaterally. He indicated that appellant's neurological examination revealed the deep tendon reflexes to be equal bilaterally in the upper and lower extremities with no motor or sensory deficit or muscle atrophy. Finally, Dr. Kaffen noted that examination of the left hip revealed no tenderness and that the range of motion in the left hip is flexion to 100 degrees, extension to neutral, abduction to 40 degrees with pain, adduction to 20 degrees and internal rotation to 10 degrees and external rotation to 30 degrees.

In a note dated May 11, 2007 and received by the Office on May 18, 2007, Dr. Soni stated that appellant continued to have discomfort. He noted:

“The employer decided [appellant] was too comfortable doing what she was doing. So they sent her for a [medical examination] and the examining doctor said there is nothing wrong with her. So, now they have [appellant] doing a standing job. Her back is beginning to bother her again. I think what has been done at her place of work is not very sensible. She needs to go back to the sit down job that she was doing before. I have given her Vicodin for the pain. She should start doing her flexibility exercises. See us back here for follow up as necessary.”

By letter dated May 21, 2007, appellant, through her attorney, requested an oral hearing. At the hearing held on September 26, 2007 appellant noted that she had been with the employing establishment for 25½ years. She testified that since March 31, 2006 she had not been in any additional accidents. Prior to the March 31, 2006 injury, appellant had not been going to a doctor for her hip, neck or back problems. She noted that her back still hurt and that she could not stand for eight hours and work. After her injury, appellant was given work sitting and answering the telephones and would occasionally fill a prescription. She noted that, when she got a new supervisor, this was changed and she was required to stand, which she could not do. Appellant alleged that Dr. Kaffen never looked at her or touched her and did not review her x-rays but rather just sat and asked her a few questions.

By decision dated December 13, 2007, the hearing representative affirmed the Office’s May 15, 2007 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition which requires further medical treatment.⁴

ANALYSIS -- ISSUE 1

The Office accepted appellant’s claim for sprain of back, lumbar region, aggravation of degeneration of cervical spine and aggravation of osteoarthritis of the left hip. It paid

² *Gewin C. Hawkins*, 52 ECAB 242 (2001).

³ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁴ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

appropriate compensation and medical benefits. In a medical report dated July 19, 2006, Dr. Soni, appellant's treating physician, stated that appellant had returned to 90 percent of her preinjury status and discharged her from his care. Appellant returned to limited-duty full-time work on July 20, 2006. In a report dated January 31, 2007, Dr. Kaffen, the second opinion physician, found that appellant did not have any residuals of the accepted conditions. He advised that she was able to return to work without restrictions and that no further treatment was necessary. Dr. Kaffen explained that there were no objective findings demonstrating employment-related residuals and that the objective findings on examination of her hip were due to the preexisting osteoarthritis without any contribution from the employment.⁵ Appellant's contention that Dr. Kaffen never touched her or examined her is contradicted by the fact that Dr. Kaffen made specific findings on physical examination with regard to movement of her back hip and upper and lower extremities. Furthermore, the Office sent Dr. Soni a copy of Dr. Kaffen's report. Dr. Soni responded by noting his agreement with Dr. Kaffen's assessment. He had discharged appellant from his care on July 19, 2006. Dr. Kaffen opined that appellant no longer had any disability or residuals causally related to the accepted conditions. Dr. Soni agreed with this assessment. The Board finds that the Office properly terminated appellant's compensation as of May 15, 2007 based on the weight of medical opinion.

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifts to her to establish that she had continuing disability causally related to her accepted employment injury.⁶ To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. 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 the claimant's diagnosed condition and the implicated employment factors. 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any continuing residuals causally related to her accepted employment injury on or after May 15, 2005. The sole medical evidence submitted after the termination of her benefits was Dr. Soni's May 11, 2007 note. Dr. Soni advised that appellant now had a standing job and her back was beginning to bother her

⁵ See *James L. Hearn*, 29 ECAB 278 (1978).

⁶ *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

⁷ See *Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

again. He commended that she needed to go back to a sitting job. Dr. Soni did not specifically relate appellant's condition to her accepted injury of March 31, 2006. Rather, it appears that he attributed her condition to her new job duties and that she sustained a new injury. Accordingly, appellant has not established any disability or entitlement to medical benefits causally related to her accepted injury after May 15, 2006.

CONCLUSION

The Board finds that the Office met its burden of proof to justify termination of appellant's compensation and medical benefits effective May 15, 2007. The Board further finds that appellant failed to establish that she had any continuing disability or residuals relating to her accepted conditions after May 15, 2007.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 13 and May 15, 2007 are affirmed.

Issued: July 23, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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