

occupational disease and remanded the case for further development.¹ The Board found that the medical evidence was sufficient to require further development and instructed the Office to refer appellant to an appropriate medical specialist to determine whether she developed carpal tunnel syndrome of the left wrist or tendinitis of the left elbow as a result of performing her employment duties. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.

The record reveals that, on September 13, 2006, appellant filed an occupational disease claim for a low back injury due to lifting luggage and standing in her job.² She submitted reports from Dr. Peter M. Cimino, a Board-certified orthopedic surgeon, dated August 28 to October 10, 2006. Dr. Cimino noted that appellant did not relate her injury to a specific incident but from performing various physical activities at the employing establishment. He diagnosed lumbar spondylosis and left leg radiculopathy and recommended steroid injections. Dr. Cimino opined that appellant's preexisting low back condition was accelerated by her work activities. A September 11, 2006 magnetic resonance imaging (MRI) scan of the lumbar spine showed diffuse annular disc bulge with severe loss of disc height at L5-S1 and central disc protrusion with mild to moderate narrowing at L4-5.

Appellant submitted reports dated December 5, 2006 and February 9, 2007, from Dr. Bradley S. Bowdino, a Board-certified neurologist. She reported repetitively lifting luggage while screening passengers at work and attributed her back injury to the work environment. Dr. Bowdino recommended physical therapy. Dr. Stephen Hosman, a Board-certified anesthesiologist, provided treatment from November 13, 2006 to February 13, 2007. He diagnosed bilateral lumbar radiculopathy and L4-5, L5-S1 protruding discs and recommended epidural steroid injections.

On April 10, 2007 the Office referred appellant to Dr. Anil K. Agarwal, a Board-certified orthopedic surgeon, for a second opinion. In a May 7, 2007 report, Dr. Agarwal noted examining appellant on May 4, 2007 and reviewed her work history. Low back examination revealed negative scoliosis, lordosis and kyphosis, normal gait, decreased range of motion with pain, normal reflexes and strength, no sensory deficit and positive straight left test. Examination of the thoracic spine showed negative scoliosis and kyphosis with normal range of motion. Examination of the cervical spine revealed negative scoliosis, lordosis and kyphosis, normal gait, normal range of motion, normal cervical compression and Spurling test, normal reflexes and strength and no sensory deficit. Dr. Agarwal diagnosed possible mild lumbar strain, healing, that was work related. He also diagnosed preexisting severe foraminal narrowing, mild to moderate central canal narrowing and chronic lumbar strain. Dr. Agarwal opined that appellant possibly had a temporary exacerbation of preexisting moderate to severe foraminal stenosis and mild to moderate central canal narrowing. He reviewed Dr. Cimino's August 28, 2006 report of lower back pain with radiation of pain to the left leg, which was present for some time but which had worsened over within the prior two weeks. Dr. Agarwal indicated that for more than six months

¹ Docket No. 07-1878 (issued February 25, 2008).

² The current appeal to appellant's claim for a low back condition. The record reveals that appellant filed a separate claim for a traumatic injury sustained on November 30, 2005, file number xxxxxx259, that was accepted by the Office for right superior labrum tear. This claim was consolidated with the current one before the Board.

appellant did not perform any heavy work and was assigned light duty. He opined that appellant sustained a temporary aggravation of her preexisting lower lumbar spine condition. Dr. Agarwal noted a history of no particular incident or repetitive strain to appellant's back before her claim of lower back pain and opined that she had a preexisting problem. He prepared a work capacity evaluation and noted that appellant reached maximum medical improvement and could return to work full time subject to restrictions.

In a supplemental report dated May 22, 2007, Dr. Agarwal responded to the Office's request for further information. He opined that appellant had an exacerbation of her preexisting back condition. Dr. Agarwal diagnosed preexisting but asymptomatic severe foraminal narrowing of the lumbar spine with mild to moderate central canal narrowing and chronic lumbar strain. He opined that appellant most likely sustained a mild lumbar strain at work and had preexisting problems which were asymptomatic. Dr. Agarwal advised that appellant reached maximum medical improvement and returned to preinjury status and sustained no permanent impairment due to her work injury.

On May 30, 2007 the Office accepted appellant's claim for temporary aggravation of spinal stenosis of the lumbar region. It noted that Dr. Agarwal had determined that the temporary aggravation had ceased and appellant returned to her preinjury status with no permanent impairment.

By decision dated June 14, 2007, the Office terminated appellant's compensation benefits effective May 4, 2007 for the accepted temporary aggravation of lumbar spinal stenosis on the grounds that the weight of the medical evidence as represented by Dr. Agarwal established that she had no continuing disability or residuals of her accepted employment injury.

Appellant requested a telephonic hearing, which was held on March 5, 2008. She submitted reports from Dr. Bowdino dated November 8, 2006 to June 30, 2007. Dr. Bowdino treated her for back pain and radiating leg pain with an onset of symptoms occurring in February 2006. He diagnosed degenerative disc disease with disc space collapse and modic changes at L5-S1. Dr. Bowdino recommended conservative treatment beginning with epidural steroid injections. On June 1, 2007 he noted that conservative treatment had failed and recommended an L5-S1 transformational lumbar interbody fusion. On July 16, 2007 Dr. Bowdino performed spinal fusion surgery with a posterior pedicle screw instrumentation, placement of capstone interbody cage and morcellization of autograft for arthrodesis.³ He diagnosed severe degenerative disc disease at L5-S1 with leftward herniation at L5-S1.

In reports dated February 13, 2007 to February 25, 2008, Dr. Hosman treated appellant for low back pain radiating into the hips and legs and administered multiple epidural steroid injections. An April 3, 2007 lumbar spine MRI scan showed unchanged small central protrusion at L4-5 and diffuse disc bulge at L5-S1, mild to moderate L4-5 central canal narrowing, moderate to severe bilateral neural foraminal narrowing at L5-S1 and interspinous ligament degenerative changes at L4-5 and L5-S1. An October 9, 2007 lumbar spine MRI scan revealed small broad-based central disc protrusion at L4-5, no underlying stenosis, postoperative changes at L5-S1 with associated granulation tissue around the thecal sac predominately along the left S1

³ This surgery was not authorized by the Office as related to appellant's accepted work injury.

nerve root sheath. In an undated statement, appellant disputed Dr. Agarwal's finding that she had returned to preinjury status and asserted that she still had pain and a worsening lumbar condition for which she underwent surgery in July 2007. She submitted articles describing a herniated disc.

In a decision dated May 28, 2008, the hearing representative affirmed the June 14, 2007 decision.

On June 24, 2008 appellant requested reconsideration and asserted that she had no back problem before her work injury. She submitted reports from Dr. Bowdino dated February 9 and July 16, 2007 and an x-ray of the lumbar spine dated October 8, 2007, all previously of record. An August 13, 2007 x-ray of the lumbar spine showed posterior changes and disc space fusion at L5-S1 with anatomic alignment. A May 13, 2008 lumbar spine computerized tomography (CT) scan revealed spinal instrumentation at L5-S1 with anterior cage fusion of the disc space and posterior screw and plate fusion with no obvious hardware complication. A May 30, 2008 lumbar spine CT scan noted findings consistent with L4-5 disc herniation, posterior spinal stenosis, minimal disc bulge at L3-4 and previous L5-S1 posterior stabilization hemilaminectomy and fusion.

In a decision dated August 8, 2008, the Office denied modification of the May 28, 2008 Office decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ It may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment. The burden of proof on the Office includes the necessity of furnishing rationalized medical opinion evidence which is based on a proper factual and medical history.⁵

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for temporary aggravation of spinal stenosis of the lumbar region that had resolved. It based its finding on the reports of Dr. Agarwal, a second opinion physician.

In a May 7, 2007 report, Dr. Agarwal provided an extensive review of appellant's medical history, reported examination findings and diagnosed possible mild lumbar strain, healing, that was work related. He also diagnosed preexisting severe foraminal narrowing of the lumbar spine, mild to moderate central canal narrowing and chronic lumbar strain. Dr. Agarwal opined that appellant had a temporary exacerbation of preexisting moderate to severe foraminal stenosis and mild to moderate central canal narrowing. He reviewed Dr. Cimino's August 28,

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁵ *T.P.*, 58 ECAB ____ (Docket No. 07-60, issued May 10, 2007); *J.M.*, 58 ECAB ____ (Docket No. 06-661, issued April 25, 2007).

2006 report, which revealed that appellant's lower back pain and radiculopathy were present for some time but had recently worsened. Dr. Agarwal also noted that appellant had been working a light-duty job for more than six months. He explained that appellant had no ongoing trauma but had sustained a temporary aggravation of her preexisting lower lumbar spine condition. Dr. Agarwal noted that appellant experienced no particular incident or repetitive strain to her back before her claim of lower back pain and opined that this was a preexisting problem. He prepared a work capacity evaluation and noted that appellant reached maximum medical improvement and could return to work full time subject to restrictions. In a supplemental report dated May 22, 2007, Dr. Agarwal diagnosed preexisting but asymptomatic severe foraminal narrowing of the lumbar spine with mild to moderate central canal narrowing and chronic lumbar strain. He opined that appellant most likely sustained a mild lumbar strain at work and had preexisting problems which had been asymptomatic and which were exacerbated. Dr. Agarwal further opined that appellant reached maximum medical improvement and returned to preinjury status and sustained no permanent impairment due to her work injury. He did not indicate that she had any ongoing symptoms or condition attributable to her employment.

Appellant submitted reports from Dr. Bowdino, dated November 8, 2006 to July 16, 2007, who treated her for back pain and leg pain and diagnosed degenerative disc disease with disc space collapse and modic changes at L5-S1. On July 16, 2007 Dr. Bowdino performed an L5-S1 transformational lumbar interbody fusion. Other reports from Dr. Hosman dated November 13, 2006 to February 25, 2008, noted appellant's continued conservative treatment for low back pain radiating into the hips and legs. He diagnosed low back, bilateral lumbar radiculopathy and L4-5, L5-S1 protruding discs and recommended epidural steroid injections. However, Drs. Bowdino and Hosman did not adequately explain the reasons why any continuing low back condition, disability or restrictions were causally related to the accepted employment injury.⁶ Additionally, their reports did not include a rationalized opinion regarding the causal relationship between appellant's current low back condition and her accepted conditions.⁷

The Board finds that the opinion of Dr. Agarwal represents the weight of the evidence and establishes that appellant's work-related conditions have resolved. Dr. Agarwal found that appellant did not have residuals from the condition of temporary aggravation of spinal stenosis of the lumbar region, that she returned to preinjury status and could return to her regular duty with restrictions due to her preexisting conditions. There is no contemporaneous medical evidence of equal weight supporting appellant's claim for continuing disability and medical residuals.

⁶ See *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁷ 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).

For these reasons, the Office met its burden of proof in terminating appellant's benefits for the accepted temporary aggravation of spinal stenosis of the lumbar region.

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.⁸ 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.⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any continuing residuals of her resolved temporary aggravation of spinal stenosis of the lumbar region causally related to her accepted employment conditions on or after June 14, 2007.

On reconsideration, appellant submitted February 9 and July 16, 2007 reports from Dr. Bowdino that were previously of record and did not otherwise support a continuing work-related condition after benefits were terminated. Other reports submitted included x-rays of the lumbar spine dated August 13 and October 8, 2007, two CT scans of the lumbar spine dated May 13 and 30, 2008. However, these diagnostic reports do not provide an opinion as to whether appellant had continuing work-related residuals or disability after June 14, 2007 causally related to her accepted low back condition. Therefore, they are insufficient to establish appellant's claim.

None of the medical reports submitted by appellant on reconsideration included a physician's rationalized opinion regarding the causal relationship between her current condition and her accepted work-related conditions.

⁸ See *I.J.* 59 ECAB ____ (Docket No. 07-2362); *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

⁹ See *Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

CONCLUSION

The Board finds that the Office met its burden of proof to terminate benefits effective June 14, 2007. The Board further finds that appellant failed to establish that she had any continuing work-related condition or disability after June 14, 2007.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 8 and May 28, 2008 are affirmed.

Issued: May 18, 2009
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