

January 26, 2004 decision, the Board found that appellant failed to establish any continuing disability causally related to her employment injury after June 14, 1999. The facts and the circumstances of the case are set out in the Board's prior decisions and are hereby incorporated by reference.

Appellant's representative requested reconsideration by letter dated January 21, 2005 and repeated his previous argument that Dr. Levin's report showed that appellant had developed a consequential somatoform condition as a result of the work injury. He also included a November 14, 2004 report from Dr. Clancy O. McKenzie, a Board-certified psychiatrist, and a January 10, 2005 report from Dr. David S. Tabby, a Board-certified neurologist. Dr. McKenzie responded to the Office's August 22, 2002 memorandum and indicated that his February 8, 2002 letter was not a report on appellant but rather it was a "simple one page letter" that was sent to another physician regarding appellant's depression. He indicated that appellant's depression was not related to the termination of her benefits. Dr. McKenzie also referred to the last paragraph in his April 29, 2001 report and reiterated that it was "a direct result of the work injuries, the chronic pain and the inability to function in her former position." He opined that appellant's depression was due to living with her injury and the primary cause was the excruciating pain that she was experiencing and her inability to perform her job as a result of the pain. Dr. McKenzie noted that other physicians attributed appellant's depression to her work injury and opined that the condition existed well before the determination was made that appellant's ankle injury had resolved. He noted that it was apparent that the depression began early in the course of her work history.

In the January 10, 2005 report, Dr. Tabby indicated that he had seen appellant three times from May to November 2004 and advised that he completely disagreed with the impartial medical examiner, Dr. Levin, that appellant had "recovered fully" from her injuries. Dr. Tabby explained that Dr. Levin did not acknowledge the fact that "a simple ankle sprain" could cause chronic pain disorder, complex regional pain syndrome (CRPS), remain present for years and spread to other portions of the body. He opined that Dr. Levin failed to identify the clinical features of CRPS, and explained that appellant walked with a cane in the left hand for support of her gait since the left foot/ankle injury created a left brachial plexus traction injury involving the left upper extremity which resulted in appellant's current headaches. Dr. Tabby noted that appellant continued to have residual permanent impairment due to the chronic pain disorder, CRPS, which he opined was caused by the March 2, 1995 employment injury. He also indicated that appellant had an earlier automobile accident from which she had recovered because she reported that she functioned normally afterwards. Dr. Tabby indicated that he disagreed with the history as reported by Dr. Levin as he did not accurately reflect events as they occurred. He opined that all of appellant's "ongoing and new problems are directly related to the foot and ankle injury of March 2, 1995." Dr. Tabby explained that there were no headaches prior to her injury and appellant subsequently had sleep difficulty, partly due to pain and developed depression. He also indicated that appellant had allodynia and thoracic outlet syndrome. Dr. Tabby also disagreed with Dr. Levin's finding of no abnormalities, noting that there was evidence of atrophy of the distal left calf on the magnetic resonance imaging (MRI) scan of September 25, 2000, involving the distal musculature of the left calf. He explained that this finding was nonspecific and might "represent chronic disuse or findings of stage III reflex sympathetic dystrophy." Dr. Tabby also noted that an earlier MRI scan demonstrated "a

Morton's neuroma of the second interspace. Appellant's pain syndrome was not consistent with Morton's neuroma alone because of the radiation up the left ankle and leg." Dr. Tabby also noted that prior evaluations of the left foot/ankle revealed that the temperature of the left foot was consistently cooler to touch and included swelling as well as less mobility of the toes on the affected left foot. He also opined that appellant had developed a neurogenic bladder secondary to the CRPS and frontal to left-sided headaches and alleged that Dr. Levin did report examining the area of the brachial plexus although Dr. Levin suggested that "thoracic outlet syndrome from using her cane was absurd." Dr. Tabby noted objective findings which included increased vein markings on the left foot, decreased temperature of the toes on the left foot, decreased spontaneous movement of the left toes, shininess of the skin on the left allodynia (irritation of her skin by her knee high stockings), deeper coloring of the left foot, puffiness of the left foot and more prominent hair follicles on the left foot. He opined that appellant had an ongoing disability due to CRPS which was caused by the employment injury on March 2, 1995.

By decision dated May 9, 2005, the Office denied modification of the June 14, 1999 decision. The Office found that appellant had not met her burden of proof to establish that she had any disability on or after June 14, 1999 causally related to her employment found that the medical evidence was not well reasoned and failed to provide sufficient medical rationale to support that she continued to have residuals of the March 2, 1995 work injury.

LEGAL PRECEDENT

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.²

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 the 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.³

ANALYSIS

The Office accepted appellant's claim for sprain of the left foot and left ankle and terminated her compensation and benefits on June 14, 1999 on the grounds that her work-related disability had ceased. The Office found that the opinion of the impartial medical specialist, Dr. Levin, constituted the special weight of the medical evidence. The Board affirmed this

² *Joseph A. Brown, Jr.*, 55 ECAB ____ (Docket No. 04-376, issued May 11, 2004). *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

³ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

decision on April 22, 2002. By decision dated January 26, 2004, the Board found that appellant had failed to meet her burden of proof to establish any disabling residuals causally related to her employment injury on or after June 14, 1999.

Appellant submitted two additional reports in support of her claim for continuing disability after June 14, 1999.

In a November 14, 2004 report, Dr. McKenzie submitted arguments regarding his previously submitted reports, including that one was not a report but rather a letter. He stated that it was his opinion that appellant's depression was due to living with her injury and that it was primarily caused by the pain that she was experiencing. The Board notes that the only conditions accepted by the Office were sprain of the left foot and ankle. Where an employee claims that a condition not accepted or approved by the Office is due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁴ Dr. McKenzie did not provide a sufficiently rationalized opinion explaining how the accepted left foot and ankle strains caused disability due to depression. The Board has held that a medical opinion not fortified by medical rationale is of little probative value.⁵ He opined that her depression did not begin until the early stages of her work injury; however, the Board has noted that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic afterwards, is insufficient, without supporting rationale, to establish causal relationship.⁶

Appellant also submitted a January 10, 2005 report from Dr. Tabby. He noted seeing appellant three times in 2004 and disagreed with the findings of Dr. Levin, the impartial medical examiner. Dr. Tabby noted that he believed that "a simple ankle sprain" could cause chronic pain disorder, CRPS, and remain present for years and spread to other portions of the body. He indicated that appellant's use of a cane in the left hand for support of her gait after the left foot/ankle injury caused a left brachial plexus traction injury involving the left upper extremity which resulted in headaches. The Board notes that the Office never accepted any conditions other than a left ankle and foot sprain. Dr. Tabby did not explain why or how appellant continued to have residuals from the accepted conditions nor did he provide detailed medical rationale to explain how the various other diagnosed conditions could have resulted from a sprain of the left foot and ankle. He indicated that appellant had an earlier automobile accident from which she indicated that she had recovered because she reported that she was functioning normally afterwards and opined that all of appellant's "ongoing and new problems are directly related to the foot and ankle injury of March 2, 1995." However, he did not provide an explanation sufficient as to show why the automobile accident was not a cause of appellant's current complaints nor did he provide any medical reasoning to support his conclusory statement that "ongoing and new problems are directly related to the foot and ankle injury of March 2, 1995." Dr. Tabby also noted objective findings including increased vein markings on

⁴ *Jaja K. Asaramo*, 55 ECAB ____ (Docket No. 03-1327, issued January 5, 2004).

⁵ *Brenda L. DuBuque*, 55 ECAB ____ (Docket No. 03-2246, issued January 6, 2004); *David L. Scott*, 55 ECAB ____ (Docket No. 03-1822, issued February 20, 2004); *Willa M. Frazier*, 55 ECAB ____ (Docket No. 04-120, issued March 11, 2004).

⁶ *John F. Glynn*, 53 ECAB 562 (2002).

the left foot, decreased temperature of the toes on the left foot, shiny skin on the left, along with deeper coloring of the left foot and puffiness. However, these findings were either not noted or found to be of any significance in previous reports of record. Dr. Tabby did not offer any medical reasoning to explain their current significance with respect to causal relationship to the 1995 injury. The need for detailed rationale is especially important since Dr. Tabby did not examine appellant until nearly 10 years after her accepted injury. Consequently, Dr. Tabby's conclusory and unrationalized opinion is insufficient to establish any new employment-related conditions or to create another medical conflict.

Appellant's attorney repeated his previous arguments including that Dr. Levin's report showed that appellant had developed a consequential somatoform condition as a result of the work injury. However, Dr. Levin did not opine that appellant's employment injury caused any emotional or somatic condition. As noted above, Dr. McKenzie's report is insufficient to establish that the employment injury caused an emotional condition and appellant had not otherwise submitted any medical evidence supporting that the employment injury caused a somatic condition.

Consequently, appellant has not established that her conditions on and after July 14, 1999 are causally related to her March 2, 1995 accepted conditions of left ankle and foot sprain.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she had any disability or condition on or after June 14, 1999 causally related to her employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 13, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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