

ice in the employing establishment parking lot. On November 17, 2003 the Office accepted appellant's claim for a contusion of the back. The Office denied her claim for compensation for the period January 22 to October 8, 2003 by decision dated December 23, 2003.

Appellant requested wage-loss compensation from December 7, 2002 to January 21, 2004. She requested reconsideration on January 20, 2004. The Office denied modification of its prior decision on March 4, 2004.

Appellant again requested reconsideration on April 6, 2004 and submitted additional medical evidence. In a report dated March 22, 2004, Dr. Bernard S. Zoranski, a Board-certified internist, noted appellant's fall on December 7, 2002 and stated that fracture of the coccyx was a working diagnosis until September 2003 when it became clear that she had experienced a herniated disc. He noted that appellant was unable to obtain timely permission for a magnetic resonance imaging (MRI) scan. Dr. Zoranski stated that appellant's herniated disc at L4-5 could only be explained by her December 7, 2002 fall.

The Office referred appellant for a second opinion evaluation on May 24, 2004. In a report dated July 1, 2004, Dr. Robert Draper, a Board-certified orthopedic surgeon, noted appellant's history of injury and complaint of low back pain. He performed a physical examination and diagnosed low back pain syndrome with preexisting degenerative lumbar disc disease L2-S1, bilateral posterolateral herniation at L4-5 and spondylolisthesis at L3-4 with broad-based bulging of the annulus fibrosis and mild stenosis. Dr. Draper opined that appellant had preexisting degenerative changes in the lumbar spine and that her spondylolisthesis and L4-5 disc herniation were not due to her employment injury. Rather, they were due to advanced degenerative disc disease. Dr. Draper stated that appellant's back contusion had resolved and that she was no longer totally disabled. He found that appellant was capable of performing light-duty work lifting less than 40 pounds due to her preexisting degenerative changes in the lumbar spine and spondylolisthesis. Dr. Draper noted that although appellant's contusion had resolved her symptoms were still present due to her other conditions. He stated, "The work-related condition of the lumbosacral strain is still active and is not causing objective findings.

By decision dated July 14, 2004, the Office denied modification of the March 4, 2004 decision finding that the evidence did not establish disability for work due to her accepted back contusion.

Appellant requested reconsideration on November 8, 2004. In support of her request, she submitted a report dated July 6, 2004 from Dr. Steven D. Grossinger, an osteopath, who described her employment injury, noting that prior to her injury she had an active lifestyle including skiing, horseback riding and jogging. Dr. Grossinger noted that appellant's physical examination corresponded with her complaints following the December 7, 2002 employment injury. He stated that her low back symptoms had been persistent following her work injury and that she was very active prior to this injury with no history of back injury or symptoms. In notes dated May 25 and October 1, 2004, Dr. David N. Bosacco, a Board-certified orthopedic surgeon, reviewed appellant's MRI scan results and history of injury. He recommended an additional MRI scan and stated that appellant could perform sedentary work. Appellant's October 11, 2004 MRI scan revealed left herniation at L4-5 and minimal spondylolisthesis at L5-S1 with moderate degenerative disc disease throughout the lumbar spine. Dr. Ronald E. Krauser, a Board-certified

rheumatologist, completed a report on October 26, 2004 and stated that he had treated appellant for fibromyalgia since October 16, 1992. He stated that she had not described low back pain until her December 7, 2002 employment injury.

By decision dated December 1, 2004, the Office again denied appellant's claim for total disability from January 22, 2003 to October 8, 2003. The Office noted that the condition of herniated disc was not accepted as due to her December 7, 2002 employment incident and that medical benefits were not authorized for this condition.

In a letter dated December 1, 2004, the Office proposed to terminate appellant's medical benefits due to her December 7, 2002 back contusion. The Office allowed appellant 30 days for a response. Appellant, through her attorney, stated on December 28, 2004 that additional evidence would be forthcoming.

By decision dated January 3, 2005, the Office terminated appellant's medical benefits due to her December 7, 2002 back contusion.

Appellant, through her attorney, requested an oral hearing on January 10, 2005. In a report dated January 5, 2005, Dr. Bosacco stated that he had reviewed appellant's medical records regarding her December 7, 2002 slip and fall. He further reviewed appellant's diagnostic testing and opined that the finding of an annular tear and herniation as demonstrated by MRI scan established an aggravation of her preexisting lumbar disc disease and spondylolisthesis. Dr. Bosacco stated that appellant continued to experience residuals of the December 7, 2002 low back injury and that her disc herniation and chronic radiculopathy were "referable to that injury to a reasonable degree of medical certainty." He opined that appellant was totally disabled and that the disc herniation and annular tears represented an aggravation of her underlying degenerative disc disease due to her employment injury within a reasonable medical certainty.

In a note dated January 4, 2005, Dr. Bosacco indicated that appellant was planning to undergo laminectomy and discectomy with spinal fusion at two levels.

Appellant, through her attorney, requested reconsideration of the December 1, 2004 decision denying her lumbar disc herniation as due to her December 7, 2002 employment injury on May 2, 2005.

By decision dated September 27, 2005, the hearing representative set aside the January 3, 2005 decision finding a conflict of medical opinion evidence regarding whether appellant's continuing low back symptoms were due to her accepted employment-related injury. The hearing representative directed that an impartial medical adviser address whether appellant continued to experience residuals of her December 7, 2002 employment injury and whether she experienced an aggravation of her underlying back conditions as a result of this injury.

On November 2, 2005 the Office referred appellant for an impartial medical examination with Dr. Ronald N. Rosenfeld, a Board-certified orthopedic surgeon and osteopath. In a report dated December 13, 2005, Dr. Rosenfeld listed appellant's history of injury and medical treatment history. He performed a physical examination and diagnosed a contusion of the sacrococcygeal area which had resolved. Dr. Rosenfeld also diagnosed multilevel lumbar degenerative disc disease, disc herniation at L4-5, lumbar radiculopathy, degenerative lumbar

spondylosis with spinal stenosis and lumbar scoliosis, spondylolisthesis and spondylolysis. He stated, "The diagnosis of sacrococcygeal contusion is the direct result of the work-related injury of December 7, 2002 and now has completely resolved." Dr. Rosenfeld opined that the remainder of appellant's diagnoses were due to preexisting degenerative conditions and were not caused by the employment injury. He further stated, "Although it is possible that the sacrococcygeal contusion injury may have temporarily aggravated the preexistent spinal degenerative condition, the effects of that aggravation are no longer present." Dr. Rosenfeld found that appellant had no work-related disability due to the December 7, 2002 employment injury.

The Office requested a supplemental report from Dr. Rosenfeld on January 10, 2006 explaining why he felt that appellant's additional diagnoses were not due to her employment injury and why he believed that her work-related residuals had resolved. Dr. Rosenfeld responded on January 12, 2006. He stated:

"The conditions of lumbar degenerative disc disease, lumbar spondylosis, spinal stenosis, lumbar scoliosis, spondylolisthesis and spondylolysis are degenerative conditions that do not occur as the result of the type of trauma that [appellant] sustained. Although lumbar disc herniation and radiculopathy can be related to trauma, the far left-sided herniation at L4-5, if significant, would have produced complaints of lumbar radiculopathy early on during her post-injury treatment phase. It appears, however, that her evaluations by her treating physician all referenced complaints of sacrococcygeal pain and not lumbar radiculopathy. The presents of this disc herniation was not noted until the MRI scan was finally performed, one year post-injury, and its development certainly could have occurred at any time, either prior to or subsequent to the December 7, 2002 injury. This is often seen as the result of lumbar degenerative disc disease and can present without a traumatic etiology."

In regard to appellant's contusion of the sacrococcygeal area, Dr. Rosenfeld noted that region was no longer tender or symptomatic and that the accepted injury had completely resolved.

In a letter dated February 1, 2006, the Office proposed to terminate appellant's medical benefits based on Dr. Rosenfeld's reports. Appellant's attorney responded on February 8, 2006 and alleged that Dr. Rosenfeld's report did not address the possibility of aggravation of the lumbar disc herniation and radiculopathy. In a report dated February 16, 2006, Dr. Bosacco stated following his initial examination of appellant on May 25, 2004, her July 6, 2004 electromyogram (EMG) demonstrated chronic left L5 radiculopathy. He stated that such a finding would indicate an injury more than six months before the EMG was performed. Dr. Bosacco opined that appellant's diagnoses of lumbar sprain and strain with aggravation of lumbar disc disease at L3-4 and L4-5 as well as chronic lumbar radiculopathy were related to the December 7, 2002 employment injury. He stated that his opinion was based on a reasonable medical certainty.

By decision dated March 8, 2006, the Office terminated appellant's medical benefits effective that date. The Office found that Dr. Rosenfeld's reports were entitled to the weight of the medical evidence.

Appellant, through her attorney, requested an oral hearing on March 14, 2006.

In a report dated March 3, 2006, Dr. Zoranski stated that appellant had no prior injuries which would have resulted in the herniated disc. He stated that appellant developed the radiculopathy during the 18 months following the employment injury. Dr. Zoranski disagreed with Dr. Rosenfeld's findings and conclusions.

Appellant testified at the oral hearing on August 1, 2006 and described her employment injury. She stated that she had no low back symptoms prior to her employment injury. Appellant stated that immediately following the December 7, 2002 employment injury her coccyx was very sore and she had pain radiating down her legs. Following the oral hearing, appellant's attorney objected to the selection of Dr. Rosenfeld, contending that he was not selected in accordance with the rotation system for impartial medical examiners.¹

In a decision dated November 8, 2006, the hearing representative affirmed the Office's March 8, 2006 termination decision finding that injury-related residuals had resolved based on Dr. Rosenfeld's reports.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.² The right to medical benefits for an accepted condition is not limited to the period of entitlement of disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which require further medical treatment.³ The Office's burden of proof in terminating benefits includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

The Federal Employees' Compensation Act provides that, if there is a 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 The implementing regulation states that if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician of an Office medical adviser or consultant, the Office shall appoint a third physician to make an examination.

¹ Appellant's attorney's allegation that Dr. Rosenfeld was not properly selected is not supported, there is no evidence in the record that he was not selected in accordance with the Office's requirements.

² *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

³ *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

⁴ *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001).

⁵ 5 U.S.C. §§ 8101-8193, 8123.

This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case.⁶

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background must be given special weight.⁷

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a back contusion as a result of her December 7, 2002 employment injury. The Office properly found that there was a conflict of medical opinion evidence. Appellant's physicians, Dr. Zoranski, a Board-certified internist, Dr. Grossinger, an osteopath, and Dr. Bosacco, a Board-certified orthopedic surgeon, attributed appellant's herniated disc and continuing low back symptoms to the December 7, 2002 employment injury. The Office referral physician, Dr. Draper, a Board-certified orthopedic surgeon, found that appellant's medical residuals due to her accepted condition had resolved and that she had no further medical condition related to the December 7, 2002 employment injury. Due to this unresolved conflict of medical opinion evidence, the Office properly referred appellant to Dr. Rosenfeld, an osteopath and a Board-certified orthopedic surgeon, for an impartial medical examination.

In a December 13, 2005 report, Dr. Rosenfeld reviewed appellant's history of injury and medical treatment and performed a physical examination. He diagnosed a contusion sacrococcygeal area which had resolved as the only condition due to appellant's December 7, 2002 employment injury. Dr. Rosenfeld also diagnosed multilevel lumbar degenerative disc disease, disc herniation at L4-5, lumbar radiculopathy, degenerative lumbar spondylosis with spinal stenosis and lumbar scoliosis, spondylolisthesis and spondylolysis. He opined that the remainder of appellant's diagnoses were due to preexisting degenerative conditions and were not caused by the employment injury. Dr. Rosenfeld found that appellant had no work-related disability due to the December 7, 2002 employment injury.

In response to the Office's request for a supplement report, Dr. Rosenfeld completed a report on January 12, 2006 and opined that appellant's additional conditions of lumbar degenerative disc disease, lumbar spondylosis, spinal stenosis, lumbar scoliosis, spondylolisthesis and spondylolysis were degenerative and would not have occurred as the result of appellant's traumatic injury. He explained that although lumbar disc herniation and radiculopathy could be related to trauma, appellant's disc herniation at L4-5 would have produced complaints of lumbar radiculopathy in the early stages of her treatment following the December 7, 2002 employment incident. Dr. Rosenfeld found upon review of the medical records that this was not the case. He noted that the disc herniation was not diagnosed until September 2003 and that this condition could have occurred at any time, either prior to or subsequent to the December 7, 2002 injury. Dr. Rosenfeld stated, "This is often seen as the result of lumbar degenerative disc disease and can present without a traumatic etiology." He also

⁶ 20 C.F.R. § 10.321.

⁷ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

noted that appellant had no tenderness of symptoms associated with her back contusion and that the condition had resolved.

Dr. Rosenfeld's report is based on a proper history of injury and medical background. He provided medical reasoning in support of his conclusions that appellant's contusion had resolved and that she had not sustained any additional medical conditions as a result of the December 7, 2002 employment injury. Dr. Rosenfeld explained that appellant's disc herniation and radiculopathy were the result of her preexisting degenerative disc disease and noted that as she did not have symptoms of this condition immediately following her accepted employment injury, the disc herniation could have reasonably developed at any time without an associated traumatic injury. The Board finds that Dr. Rosenfeld's report was entitled to the weight of the medical evidence and establishes that appellant had no continuing medical residuals of her December 7, 2002 employment injury.

LEGAL PRECEDENT -- ISSUE 2

Once the Office has met its burden of proof in terminating compensation benefits, the burden of proof shifts to appellant to establish that she remains entitled to compensation benefits after the date of termination. To establish causal relationship between the claimed condition and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background support such a causal relationship.⁸

ANALYSIS -- ISSUE 2

Following the Office's March 8, 2006 decision terminating her medical benefits, appellant submitted an additional report from Dr. Zoranski, a Board-certified internist, who disagreed with Dr. Rosenfeld's conclusions. Dr. Zoranski opined that appellant had no prior injuries that would account for her disc herniation. He noted that appellant developed the radiculopathy during the 18 months following the employment injury.

Dr. Zoranski did not provide any medical reasoning in support of his opinion that appellant's disc herniation was due to her 1992 employment injury. The Board has held that neither the mere fact that a disease or condition manifests itself during a period or employment nor the belief that the disease or condition was caused or aggravated by employment factors of incidents is sufficient to establish causal relationship.⁹ Further, as Dr. Zoranski was on one side of the conflict that Dr. Rosenfeld resolved, the additional report from Dr. Zoranski is insufficient to overcome the weight accorded Dr. Rosenfeld as the impartial medical examiner or to create a new conflict.¹⁰

⁸ *Manuel Gill*, 52 ECAB 282, 287 (2001).

⁹ *Michael R. Shaffer*, 55 ECAB 386, 389 (2004).

¹⁰ *Jaja K. Asaramo*, 55 ECAB 200, 205 (2004).

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's claim for medical treatment due to her December 7, 2002 employment injury. The Board further finds that appellant has not submitted sufficient medical evidence to establish a continuing or additional medical condition due to her December 7, 2002 employment injury on or after March 8, 2006.

ORDER

IT IS HEREBY ORDERED THAT the November 8, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2007
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