

for headache and neck strain/sprain. Appellant stopped work on March 4, 2002, returned to work on July 8, 2002, stopped again on July 9, 2002 and has not returned to work.

On July 26, 2002 the Office received reports dated June 11 and July 12, 2002 by Dr. Randall G. Drye, a treating physician, who in his June 11, 2002 report, opined that the February 28, 2002 employment injury¹ exacerbated her degenerative problems. In support of this conclusion, he noted that “it certainly is not unusual for preexisting degenerative changes to be asymptomatic and brought into disabling reality through a traumatic event such as she describes.” In his July 12, 2002 report, Dr. Drye concluded that appellant was disabled from performing her date-of-injury job. He noted that appellant had an extensive and long “history of both central and peripheral osteoarthritis of a significant degree, acquired cervical and lumbar stenosis and rheumatoid arthritis” which affected her neck and low back. Dr. Drye opined that appellant was totally disabled from her job as “[s]training the neck results in increased pain” and as this and manipulation with her hand, standing, use of the telephone and walking “are essential in her employment description.”

In a disability note dated July 12, 2002, Dr. Drye opined that appellant was totally disabled due to degenerative disc disease, lumbar and cervical stenosis, arthritis and shoulder arthritis.

In a progress noted dated July 24, 2002, Dr. Gwendolyn C. Galphin, a treating Board-certified internist, opined that appellant was totally disabled due to her head and neck injury.

In an August 30, 2002 functional capacity evaluation, Richard L. Watson, a physical therapist reported that appellant had limited spinal range of motion due to head pain, upper extremity motion was limited due to pain. He noted that appellant was “unable to perform any repetitive motions, static positions, anything that requires trunk or neck rotation.” In concluding, he noted that appellant was unable to perform her date-of-injury position “due to pain and ability to functional motion and strength.”

On a September 9, 2002 work capacity evaluation (Form OWCP-5c), Dr. Drye concluded that appellant was totally disabled based upon the functional capacity evaluation.

Based on the medical evidence of record providing that appellant was disabled, the Office referred her along with medical records, a statement of accepted facts and a list of specific questions to Dr. Gerald D. Schuster, a Board-certified orthopedic surgeon, for a second opinion medical examination. He submitted a September 26, 2002 report providing a history of appellant’s February 28, 2002 employment injury and medical treatment. Dr. Schuster noted appellant’s complaint of pain in her neck and right and left shoulders. He also noted that she continues to have “headaches which are on the top of her head.” On physical examination, Dr. Schuster noted that appellant complained of right levator scapular pain on pressure, but found “no evidence of spasm over the rhomboids or the sternomastoids or over the levator area. He reported appellant “was able to turn her neck on both sides as her husband was located at a 90 degree angle to her,” but that he was unable to get appellant to flex or rotate her neck during

¹ Dr. Drye refers to the year as “2001,” which appears to be a typographical error.

examination. Dr. Schuster also noted that appellant had no problem turning “her head to both sides” while talking to him. He reviewed appellant’s medical records and opined:

“This patient appears to have had a soft tissue strain superimposed on a previous degenerative cervical spine. Her subjective complaints are way out of proportion to the objective findings. She voluntarily is restricting motion which leads me to believe that there is significant symptom magnification occurring.”

In concluding, Dr. Schuster opined that appellant had a temporary aggravation of her symptoms due to the February 28, 2002 employment injury and that accepted headache and stain conditions had resolved. With regards to the functional capacity evaluation indicating appellant’s condition had deteriorated, he opined that appellant’s “problem now is functional and grossly inappropriate.”

On October 28, 2002 the Office issued a notice of proposed termination of benefits based on the opinion of Dr. Schuster.

On November 29, 2002 the Office received a November 25, 2002 letter from appellant’s attorney contesting the proposed termination of benefits. The Office also received: magnetic resonance imaging scans dated May 30 and October 13, 2001 and September 26, 2002; medical and treatment reports from 2001; a September 9, 2002 work capacity evaluation form, reports dated June 11, July 12 and September 9, 2002 by Dr. Drye; a September 26, 2002 report by Dr. Schuster with comments from appellant, treatment notes for the period May 20 to June 19, 2002 by Dr. Earl B. McFadden, Jr.; April 25, 2002 treatment notes by Subhash J. Patel; a March 11, 2002 report by Chris Ballew, a physical therapist; progress notes for the period March 11 to 28, 2002 by Deborah Russell, PTA; an August 30, 2002 functional capacity evaluation; disability slips dated May 8, June 10 and 19, July 12 and September 9, 2002; and treatment notes dated March 29 to July 24, 2002 and a September 4, 2002 report by Dr. Gwendolyn C. Galphin, a Board-certified internist.

In disability notes dated June 25, 2002, Dr. Galphin indicated that appellant could return to work on July 2, 2002. However, in disability notes dated June 24 and August 15, 2002, she concluded that appellant was totally disabled due to cervical, arm and headache pain.

In treatment notes dated April 25, 2002, Dr. Patel diagnosed right shoulder, head and neck contusion. Dr. Patel related that appellant sustained employment injuries in February 2001 and February 2002. He also stated that appellant could do light work for a couple of weeks.

Dr. McFadden in treatment notes dated May 20 and June 19, 2002 diagnosed a right shoulder impingement and noted that appellant had a fall in February 2002 where she injured her shoulder. On June 19, 2002 he opined that appellant was capable of performing light-duty work.

In a September 9, 2002 report, Dr. Drye reported that appellant injured herself on February 28, 2002 when “someone dropped a large heavy frame” while “[s]he was bent at a

water dispenser and that “she struck her head as she straightened out.” He diagnosed “an acute cervical strain on top of her preexisting diagnosis.” Dr. Drye opined:

“Insomuch as she was able to work at the time of the last incident of February 28, 2002 and has been unable to return to work since. I would feel that this incident is causally related to her diagnosis of severe myofascial syndrome with chronic cervical strain and underlying degenerative dis[c] disease and spondylosis of the cervical and lumbar spine.”

By decision dated December 2, 2002, the Office terminated appellant’s compensation benefits, including medical benefits, that day on the grounds that the evidence failed to establish that she had any residuals of her February 28, 2002 employment injury. The Office relied on the second opinion of Dr. Schuster, who found that appellant had recovered from her February 28, 2002 employment injury and had no disability due to her accepted employment injuries. In addition, the Office found that appellant failed to submit any “medical relevant evidence or any additional arguments” establishing that she continued to be disabled or had residuals due to her employment injury.

On December 1, 2003 the Office received a letter dated November 25, 2003 requesting reconsideration by appellant’s counsel and submitted medical evidence in support of her request.

In a letter dated August 23, 2004, appellant’s counsel requested reconsideration and submitted unsigned treatment notes containing the typed name of Dr. McFadden for intermittent periods between March 16 and June 30, 2004 revealing treatment for a right shoulder condition.

By decision dated October 12, 2004, the Office denied appellant’s request for modification of the termination of her compensation benefits.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee’s benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office’s burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁵

² *Paul L. Stewart*, 54 ECAB ___ (Docket No. 03-1107, issued September 23, 2003); *Jorge E. Sotomayor*, 52 ECAB 105 (2000).

³ *Elsie L. Price*, 54 ECAB ___ (Docket No. 02-755, issued July 23, 2003); *Mary A. Lowe*, 52 ECAB 223 (2001).

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

⁵ *James F. Weikel*, 54 ECAB ___ (Docket No. 01-1661, issued June 30, 2003).

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given to each individual report.⁶

Once the Office meets its burden of proof in terminating compensation, the burden of proof shifts to appellant to establish that he remains entitled to compensation after that date.⁷ To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.⁸

ANALYSIS

The Office accepted that appellant sustained a neck sprain/strain and headache on February 28, 2002 and awarded appropriate benefits. In a decision dated December 2, 2002, which was affirmed by an October 12, 2002 Office decision denying modification, the Office terminated appellant's benefits effective that day on the grounds that she no longer had any residuals due to her accepted employment injuries. In support of this decision, the Office relied upon the opinion of the Office second opinion physician, Dr. Schuster, who established that appellant had no further employment-related disability of her back and head attributable to her February 28, 2002 work-related injury.

Initially, the Board notes that the instant case pertains only to the employment injury sustained on February 28, 2002. The record contains no evidence that a claim was filed for an injury sustained in 2001 or that the Office accepted this claim. Thus, all the medical reports submitted for 2001 and the medical reports pertaining to a February 2001 employment injury are not relevant to the issue at hand, which is whether appellant continues to have residuals or disability due to her accepted February 28, 2002 employment injury.

The Board has carefully reviewed the opinion of Dr. Schuster and finds that it has reliable, probative value and convincing quality with respect to the conclusions reached regarding the relevant issue in the present case and constitutes the weight of the medical evidence. He noted appellant's complaint of pain in her neck and right and left shoulders and that she continues to have headaches at the top of her head. On physical examination, Dr. Schuster noted that appellant complained of right levator scapular pain on pressure, but found "no evidence of spasm over the rhomboids or the sternomastoids or over the levator area. He reported that appellant "was able to turn her neck on both sides as her husband was located at a 90 degree angle to her," but that he was unable to get appellant to flex or rotate her neck during examination. Dr. Schuster also noted that appellant had no problem turning "her head to both

⁶ *Jean Cullition*, 47 ECAB 728 (1996).

⁷ *See Daniel F. O'Donnell, Jr.*, 54 ECAB____ (Docket No. 02-1468, issued February 28, 2003).

⁸ *Id.*

sides” while talking to him. Based upon a review of the medical records and physical examination, he opined that appellant sustained “a soft tissue strain superimposed on a previous degenerative cervical spine” and that appellant’s “subjective complaints are way out of proportion to the objective findings.” He noted that appellant was voluntarily restricting her motion which he believed demonstrated “that there is significant symptom magnification occurring.” In concluding, Dr. Schuster opined that appellant sustained a temporary aggravation of her symptoms due to the February 28, 2002 employment injury and that accepted headache and strain conditions had resolved. With regards to the functional capacity evaluation indicating appellant’s condition had deteriorated, he opined that appellant’s “problem now is functional and grossly inappropriate.”

In response to the October 28, 2002 proposal to terminate benefits, appellant submitted various medical and objective evidence from 2001 and 2002 included various periodic medical reports from Dr. Drye, a September 9, 2002 report by Dr. Drye, progress notes by Dr. Galphin, an August 20, 2002 work capacity evaluation signed by Mr. Watson, various treatment notes by Drs. McFadden and Patel and disability slips. This evidence contains no rationalized opinion explaining how appellant’s current disability is causally related to her accepted employment injuries. Both Drs. McFadden and Patel diagnose a right shoulder condition. However, the Office has not accepted that appellant sustained a right shoulder condition as a result of the accepted employment injury and these physicians have provided no rationale explaining how this condition would be related. As the Board has held, appellant has the burden of proof to establish that conditions not accepted by the Office are employment related.⁹ This she has not done. Thus, the Board finds that these reports are insufficient to cause a conflict with the opinion of Dr. Schuster.

Although Dr. Drye sent periodic reports indicating that appellant was still totally disabled from residuals from her accepted work injury, he failed to provide a rationalized, probative medical opinion relating appellant’s current condition to her February 28, 2002 accepted employment injury. He stated that “it certainly is not unusual for preexisting degenerative changes to be asymptomatic and brought into disabling reality through a traumatic event such as she describes.” Dr. Drye also concluded that appellant was totally disabled from her date-of-injury job as “[s]training the neck results in increased pain” and as this and manipulation with her hand, standing, use of the telephone and walking “are essential in her employment description.” However, he never explained how pathophysiologically the cervical strain or headache injury would have caused “central and peripheral osteoarthritis of a significant degree, acquired cervical and lumbar stenosis and rheumatoid arthritis.” Further, appellant never filed a claim nor did the Office ever accept any claim based on a degenerative disc condition or osteoarthritic condition.

Similarly, Dr. Drye’s September 9, 2002 report is insufficient to create a conflict in the medical opinion evidence. He stated that appellant injured herself on February 28, 2002 when “someone dropped a large heavy frame” while “[s]he was bent at a water dispenser and that “she struck her head as she straightened out.” Dr. Drye diagnosed “an acute cervical strain on top of her preexisting diagnosis.” He concluded that appellant’s “severe myofascial syndrome with

⁹ See *Charlene R. Herrera*, 44 ECAB 361 (1993).

chronic cervical strain and underlying degenerative dis[c] disease and spondylosis of the cervical and lumbar spine” was employment related because she had returned to work after the first employment injury and had no problem working prior to the February 28, 2002 employment injury. The Board notes that Dr. Drye did not specifically address how appellant’s continuing conditions or medical restrictions were causally related to the accepted February 2002 claim. The Office never accepted that appellant sustained severe myofascial syndrome, chronic cervical strain, cervical and lumbar spine degenerative disc disease or spondylosis as a result of her federal employment and he provided insufficient medical opinion explaining how these conditions were caused or aggravated by the accepted cervical strain/sprain and headache. Moreover, he provides an incorrect history of the injury in his September 9, 2002 report as no one “dropped a large heavy frame” on appellant while she was at the water dispenser.

The Board finds that the opinion of Dr. Schuster is sufficiently well rationalized and based upon a proper factual background. It represents the weight of the evidence and establishes that appellant’s work-related condition resolved. Dr. Schuster indicated that she did not have residuals from the condition of headache and cervical strain/sprain.

As the Board finds that the Office met its burden of proof to terminate appellant’s compensation benefits, the burden of proof shifts to her to establish continuing residuals.¹⁰ Following the termination, appellant submitted unsigned medical notes containing Dr. McFadden’s stamped name. As these reports were unsigned, the Board finds that they are of no probative value as the preparer cannot be readily identified as a physician.¹¹

CONCLUSION

Under the circumstances described above, the Board finds that the Office met its burden to terminate appellant’s compensation benefits and appellant has not met her burden of proof to establish continuing employment-related residuals.

¹⁰ See *Daniel F. O’Donnell, Jr.*, *supra* note 7.

¹¹ See *Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 12, 2004 is affirmed.

Issued: July 5, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member