

forklift and lost consciousness in the course of his federal employment. He was taken to an emergency room and has not returned to work. Appellant came under the care of Dr. Joseph J. Dobner, a Board-certified orthopedic surgeon. On March 2, 2005 the Office accepted that he sustained cervical, thoracic and lumbar strains. Appellant received appropriate compensation benefits for total disability.

In a March 22, 2005 report, Dr. Dobner noted that appellant complained that he hurt all over. He recommended consultation with a neurologist, electromyographic testing and magnetic resonance imaging (MRI) scan of the cervical spine. By report dated March 24, 2005, Dr. Daniel J. Howley, Board-certified in neurology, noted the history of injury and appellant's current complaints of vertigo, blurred vision, and head, neck and right arm pain with paresthasias. On examination power was normal in all extremities and sensation to pinprick was intact except for an area in the right mid thigh. Dr. Howley opined that appellant's symptoms could represent postconcussive syndromes and recommended a brain MRI scan to rule out other processes. A March 28, 2005 MRI scan of the brain with and without contrast was normal, although inflammatory disease of the left maxillary sinus was noted. In an April 6, 2005 report, Dr. Howley reviewed the MRI scan findings and found that appellant did not have a significant neurological problem. He advised that there could be a functional component. On May 31, 2005 Dr. Dobner noted that a cervical spine MRI scan demonstrated multilevel degenerative disc disease and a lower back MRI scan demonstrated spondylolysis. He advised that these conditions could cause appellant's arm and leg pain.

On June 29, 2005 the Office referred appellant to Dr. Richard T. Sheridan, Board-certified in orthopedic surgery, for a second opinion evaluation. He was furnished with the medical record, a statement of accepted facts and a set of questions. In reports dated July 25, 2005, Dr. Sheridan noted his review of the record, the history of injury and appellant's complaints. Physical findings included a positive sitting and standing straight-leg raise examination. Lower extremity strength was five. Dr. Sheridan diagnosed vertigo, spondylolysis and spondylolisthesis which he advised were not caused by the January 20, 2005 employment injury. He opined that the accepted conditions of cervical, thoracic and lumbar strains had fully resolved. Dr. Sheridan stated that appellant had no physical restrictions and could resume his regular duties as a tobacco inspector for eight hours a day.

By letter dated August 9, 2005, the Office informed appellant that it proposed to terminate his compensation benefits on the grounds that the medical evidence established that the employment-related conditions and disability had ceased. Appellant disagreed with the proposed termination.¹ He submitted an August 16, 2005 report from Dr. Dobner who noted that appellant had sustained a wrist injury. In an August 19, 2005 report, Dr. G. Christopher Stephens, a Board-certified orthopedic surgeon, reported a history that appellant sustained "a pretty severe back injury" in January and noted his complaints of neck pain radiating in the right arm and low back pain radiating into the left leg. Physical examination demonstrated decreased neck range of motion and diffuse weakness in the right upper extremity. Straight leg raise testing was positive.

¹ Appellant, through counsel, actually requested a hearing by letter dated September 10, 2005. On September 21, 2005 the Office informed appellant's attorney that a final decision had not been rendered in this case, and by decision dated September 30, 2005, an Office hearing representative found that appellant's September 10, 2005 hearing request was not in posture as a final Office decision had not been issued at that time.

Dr. Stephens reported low back MRI scan findings of degenerative disc disease with an annular tear at L4-5 and spondylolisthesis at L5-S1. A cervical spine MRI scan demonstrated end-stage cervical spondylosis at C4-5 and C5-6. Dr. Stephens diagnosed cervical spondylitic radiculopathy, lumbar spondylolisthesis and back and leg pain secondary to degenerative disc disease and stated that he discussed surgical options with appellant.

By decision dated September 26, 2005, the Office finalized the proposed termination, effective that day, on the grounds that the medical evidence established that his accepted conditions had resolved. On October 1, 2005 appellant, through his attorney, requested a hearing that was held on April 26, 2006. Counsel noted that he had not worked since the employment injury. He was given an additional 30 days to submit medical evidence. In a July 14, 2006 decision, an Office hearing representative affirmed the September 26, 2005 decision.

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. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.² 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.³

ANALYSIS

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective September 26, 2005. In his reports dated July 25, 2005, Dr. Sheridan, who provided a second opinion evaluation for the Office, noted his review of the record including the history of injury and appellant's complaints. He provided examination findings and advised that, while appellant had diagnoses of vertigo, spondylolysis and spondylolisthesis, these were not caused by the January 20, 2005 employment injury. Dr. Sheridan opined that the accepted conditions of cervical, thoracic and lumbar strains had fully resolved and appellant could return to his usual job as tobacco inspector without restriction.

The medical evidence, as represented by the opinion of Dr. Sheridan, supports a finding that, at the time the Office terminated appellant's compensation benefits, on September 26, 2005, he had no continuing residuals of his accepted cervical, thoracic and lumbar strains. Dr. Dobner's August 16, 2005 report is irrelevant as it discusses a wrist injury which is not at issue in this claim. In his reports dated March 24 and April 6, 2005, Dr. Howley merely noted that appellant had a normal brain MRI scan and no significant neurological problem. While he diagnosed vertigo, he did not provide a cause of this condition and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁴ In his August 19, 2005 report, Dr. Stephens noted a

² *Gloria J. Godfrey*, 52 ECAB 486 (2001).

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁴ *Willie M. Miller*, 53 ECAB 697 (2002).

history that appellant sustained a severe back injury on January 20, 2005 and diagnosed cervical spondylitic radiculopathy, lumbar spondylolisthesis, and back and leg pain secondary to degenerative disc disease, these conditions that have not been accepted as employment related. For conditions not accepted by the Office as being employment related, it is appellant's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove any such relationship.⁵ Dr. Stephens provided no opinion regarding the accepted conditions and did not exhibit a thorough knowledge of the factual circumstances of appellant's employment injury. Medical conclusions based on inaccurate or incomplete histories are of little probative value and are insufficient to satisfy a claimant's burden of proof.⁶ The Board therefore finds that the record therefore does not support that appellant had any residuals of his accepted cervical, thoracic and lumbar strains, and the Office met its burden of proof to terminate appellant's compensation benefits effective September 26, 2005.⁷

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective September 26, 2005.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 14, 2006 be affirmed.

Issued: February 20, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

⁵ *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁶ *John W. Montoya*, 54 ECAB 306 (2003).

⁷ The Board notes that appellant submitted evidence subsequent to the July 14, 2006 Office decision. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).