



in a November 19, 2004 report (Form CA-20) that appellant was totally disabled. Appellant stopped working in November 2004 and his employment was terminated on December 23, 2004. The Office began paying appellant compensation for wage loss.

Appellant was referred by the Office for a second opinion examination by Dr. John Chu, a Board-certified orthopedic surgeon.<sup>1</sup> In a report dated July 11, 2005, Dr. Chu provided a history and results on examination. He reviewed the medical evidence and diagnosed chronic back pain, thoracic and lumbar spine due to degenerative disc disease, minimal thoracic lumbar scoliosis and history of rib fractures, healed. Dr. Chu stated, "I believe the claimant's aggravation of scoliosis has also healed with no residuals. I believe the claimant's scoliosis is minimal and likely preexisted the claimant's specific injury of 1997. I see no evidence of a prior bony injury such as a compression fracture, which could have resulted in worsening his back curvature." The second opinion examiner noted that appellant had some back discomfort which may be related to degenerative discs, but he did not believe the discomfort was related to the scoliosis. Dr. Chu also opined that no other conditions were employment related; he stated that the peripheral neuropathy was nonanatomic or structural in nature.

In a letter dated July 19, 2005, the Office notified appellant that it proposed to terminate his compensation based on the weight of the evidence. By decision dated August 23, 2005, the Office terminated compensation for wage-loss and medical benefits.

Appellant requested a review of the written record by the Branch of Hearings and Review. He submitted a September 16, 2005 report from Dr. Lode, who opined that there were certain "fallacies" in Dr. Chu's report. Dr. Lode indicated that although Dr. Chu stated that appellant was taken off work by his treating physician, this was not true as "I was told by [appellant] that the [employing establishment] told him he could not work anymore and that he should go on disability." The family practitioner also stated that appellant was on medicine for neuropathy, contrary to Dr. Chu's report. Dr. Lode also disputed Dr. Corkill's opinion that the polyneuropathy was due to hypothyroidism, as appellant had longstanding treatment for the condition and his thyroid levels were within normal range. He noted appellant's symptoms, including poor balance, occurred after the fall. Dr. Lode opined that appellant's pain was "secondary to the trauma and he has polyneuropathy on the basis of that, not hypothyroidism nor other etiologies." He concluded that appellant was disabled as a result of the traumatic injury.

In a decision dated January 19, 2006, the Office hearing representative affirmed the August 23, 2005 decision.

### **LEGAL PRECEDENT**

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> The Office may not terminate compensation without

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<sup>1</sup> The statement of accepted facts provided to Dr. Chu reported the accepted conditions were rib fracture and aggravation of idiopathic scoliosis.

<sup>2</sup> *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

establishing that disability ceased or that it was no longer related to the employment.<sup>3</sup> The right to medical benefits is not limited to the period of entitlement to disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.<sup>4</sup>

### ANALYSIS

The Office terminated compensation for wage-loss and medical benefits based on the report of Dr. Chu, the second opinion examiner. The accepted conditions were rib fractures and a scoliosis condition. While there was some inconsistency in the description of the accepted scoliosis condition (initially it was reported as post-traumatic thoracolumbar scoliosis, while the May 10, 2005 statement of accepted facts stated aggravation of idiopathic scoliosis), Dr. Chu did have an accurate history of the employment incident and complete medical records. Dr. Chu noted minimal scoliosis, which he found preexisted the employment injury. He indicated that there was no evidence of a prior bony injury or compression fracture that could have worsened the back curvature. Dr. Chu opined that there were no residuals from employment. In addition, he indicated that the accepted rib fractures had resolved.

Dr. Chu provided a rationalized medical opinion, based on a complete background, supporting a finding that the accepted employment-related conditions had resolved. There were no current medical reports supporting a continuing employment-related condition. The weight of the evidence therefore was represented by Dr. Chu. Accordingly, the Board finds that the Office met its burden of proof in terminating compensation for wage loss and medical benefits effective August 23, 2005.

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits 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.<sup>5</sup> Appellant submitted a September 16, 2005 report from Dr. Lode, who reported that Dr. Chu had some errors in his report. Although Dr. Lode appeared to indicate that he did not take appellant off work as reported by Dr. Chu, the November 19, 2005 CA-20 form does state that appellant was totally disabled. The discussion of medication for polyneuropathy is not relevant to Dr. Chu's opinion on residuals of the accepted employment-related conditions.

The Board notes that the condition of polyneuropathy has not been accepted as employment related. Dr. Lode offers an opinion that the condition is related to the September 19, 1997 employment injury, without providing medical rationale. He opined that it was not related to hypothyroidism, but this does not establish the condition was related to the accepted employment fall. Dr. Lode briefly noted that appellant had symptoms such as poor balance after the fall. The presence of symptoms after an injury does not establish causal

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<sup>3</sup> *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

<sup>4</sup> *Frederick Justiniano*, 45 ECAB 491 (1994).

<sup>5</sup> *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

relationship. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is not sufficient, without supporting rationale, to establish causal relationship.<sup>6</sup> Dr. Lode did not provide medical rationale in support of causal relationship between a polyneuropathy and the employment injury. Based on the evidence of record, therefore, the Board finds that appellant did not submit sufficient evidence to establish a continuing employment-related condition or disability after August 23, 2005.

**CONCLUSION**

The Office met its burden of proof to terminate compensation for wage-loss and medical benefits effective August 23, 2005.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 19, 2006 is affirmed.

Issued: March 16, 2007  
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

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<sup>6</sup> See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (because the employee is symptomatic after an injury is not sufficient to establish causal relationship without supporting rationale).