

The issues are: (1) whether the Office properly terminated appellant's compensation benefits, effective February 20, 2005, on the grounds that he had no disability or residuals causally related to his accepted lumbosacral strain; and (2) whether appellant established that continuing disability or residuals related to his accepted employment injury.

## **FACTUAL HISTORY**

On July 9, 2001 appellant, then a 57-year-old letter carrier clerk, filed a traumatic injury claim, Form CA-1, alleging that he injured his lower and middle back on July 6, 2001 when he lifted bundles of flat mail.<sup>1</sup> Office File No. 062040117.

In a July 6, 2001 report, Dr. David Shultz, an osteopath, diagnosed lumbosacral strain and noted that x-rays revealed degenerative changes throughout the lumbar spine and mild narrowing at L5-S1. He reported that appellant had a history of intermittent back pain and some periods of chronic back pain, the last being in 1999. Dr. Shultz also noted that appellant had permanent work restrictions related to his knees.<sup>2</sup> He stated that appellant's current subjective symptoms included nonradiating low back pain. On December 10, 2001 the Office accepted the claim for lumbosacral strain.

On April 17, 2002 Dr. Robert Baum, a Board-certified physiatrist, reported that appellant was experiencing ongoing soreness in his low back, which he attributed primarily to his duties at the employing establishment. He limited appellant to four hours of sedentary work per day because his pain increased with movement. On April 19, 2002 the employing establishment provided appellant a limited-duty position.

By decision dated October 23, 2002, the Office issued appellant a wage-earning capacity determination based on his actual earnings in his part-time schedule as a clerk/carrier and placed him on the periodic rolls.

On July 16, 2003 Dr. Baum removed appellant from work so that he could participate in physical therapy for chronic low back and neck pain. On July 17, 2003 appellant requested compensation for wage loss beginning July 21, 2003. On August 5 and 8, 2003 the Office denied authorization for physical therapy and wage-loss compensation, noting that Dr. Baum had not provided a detailed, narrative medical report relating appellant's current condition to the accepted employment injury.

On September 4, 2003 Dr. Baum provided an overview of appellant's treatment. He stated that on July 3, 2001 appellant had informed Dr. David DeBoer, a Board-certified orthopedic surgeon, that he had radiating pain in his lower right leg. Dr. DeBoer determined that the problem was not caused by appellant's right knee, on which he had previously operated and referred him to Dr. Baum for spinal treatment. On July 10, 2001 a magnetic resonance imaging (MRI) scan performed on appellant's lumbar spine revealed moderate widespread spondylosis with borderline spondylosis at L2-3 and bilateral foraminal stenosis but no definite herniations. Based on the MRI scan, Dr. Baum diagnosed low back pain with radicular pain in the right leg and treated appellant unsuccessfully with epidural steroid injections. He then referred appellant to Dr. Tarek Elalayli, a Board-certified orthopedic surgeon. On December 26, 2001 Dr. Elalayli

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<sup>1</sup> The Board notes that appellant simultaneously filed a claim of recurrence of disability related to a back injury sustained in 1999. The recurrence claim was not developed. The record establishes that on September 28, 1999 appellant was accepted for a cervical strain and contusion of the ribs under File No. 060736689.

<sup>2</sup> Appellant was accepted for knee conditions under File No. 060530525 for a January 24, 1986 injury.

found that appellant had spondylosis, but no significant stenosis or degenerative disc disease. On January 14, 2002 he stated that appellant had no spinal instability or misalignment.

On April 17, 2002 Dr. Baum limited appellant to four hours of sedentary work per day. On August 14, 2002 he reported that for the previous month appellant had experienced cervical and right shoulder discomfort, which started without any associated accident or injury. On March 31, 2003 Dr. Baum reported that appellant continued to have cervical pain and radicular symptoms in his right arm despite undergoing physical therapy. An MRI scan revealed a moderate-sized right paracentral disc protrusion at C5-6 that was causing an impression on the right anterolateral aspect of the cord, mild narrowing of the right C5-6 neuroforamen and small protrusions from C2 to C5. On April 2, 2003 Dr. Elalayli diagnosed right C5-6 herniated disc. On May 14, 2002 he found that appellant had pain in his left shoulder and diagnosed left shoulder impingement. On June 13, 2003 Dr. Baum removed appellant from work until he could get physical therapy for his cervical and shoulder pain. In light of this medical history, he stated that appellant's spondylosis and bilateral foraminal stenosis were preexisting, but that they could have been aggravated by his employment duties. Dr. Baum found that appellant's ability to function at work was compromised.

On June 4, 2002 the employing establishment submitted a report on surveillance conducted May 27 and 28, 2004. The employing establishment alleged that appellant engaged in yard work for three consecutive hours without any apparent difficulty or discomfort.<sup>3</sup>

The Office referred appellant for a second opinion on the causal relationship between his current condition and his accepted injury. On June 29, 2004 Dr. Neil Spitalny, a Board-certified orthopedic surgeon, reviewed appellant's medical history and conducted a physical examination. He noted that appellant complained of low back and neck pain and bilateral shoulder numbness. Appellant stated that his pain was deep inside and that it increased with coughing and sleeping and improved with rest and decreased movement. Dr. Spitalny found 85 degrees of flexion, 20 degrees of right lateral rotation and 30 degrees of left lateral rotation in appellant's spine and symmetrically decreased reflexes in the ankles and knees. He found that the radiographs showed "surprisingly little degenerative changes at L4 with some L5-S1 disc space narrowing and normal alignment." Dr. Spitalny diagnosed chronic deconditioning syndrome based on mild to moderate lumbar spondylosis and previously existing degenerative disc disease. He opined that the cervical and lumbar disc disease was part of the normal aging process, but that appellant's preexisting back and knee problems made him more prone to lumbar strain. Dr. Spitalny found that appellant was not totally disabled from work, but recommended limiting his walking, standing and squatting. He found that the aggravation of the underlying spondylosis was temporary "as it had been from 1993 to 1999 to 2001" and that appellant had ceased work in 2003 because of his unrelated neck and shoulder problems.

On August 20, 2004 the Office requested that Dr. Spitalny supplement his report. On August 26, 2004 Dr. Spitalny stated that appellant had no work limitations related to his July 6, 2001 employment injury. However, because of his knee, shoulder and back conditions, appellant

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<sup>3</sup> Photographs from the surveillance were submitted to the Office on June 29, 2004.

would be limited in his functional capacity. On November 10, 2004 the Office provided Dr. Spitalny's report to Dr. Baum for his review. Dr. Baum did not respond.

By notice dated January 3, 2005, the Office proposed termination of appellant's wage-loss compensation and medical benefits based on Dr. Spitalny's report.

On January 7, 2005 appellant challenged Dr. Spitalny's findings. He stated that his preexisting cervical condition had been accepted by the Office and that he had complained about cervical pain shortly after he sustained injury on July 6, 2001. On January 21, 2005 appellant submitted documents related to his July 6, 2001 employment injury, his 1999 employment injury, and a 1991 claim for lumbar and cervical strain. He noted that an occupational health services intake sheet dated July 9, 2001 contained the statement "[Patient] states, 'This wouldn't have anything to do with my neck being stiff would it?'"

By decision dated February 9, 2005, the Office terminated appellant's benefits effective February 20, 2005. The Office found that the evidence submitted by appellant was repetitious or irrelevant and that the evidence of record established that appellant was able to return to regular duty. The Office found that the weight of the medical evidence rested with Dr. Spitalny, who opined that appellant's lumbosacral strain of July 6, 2001 had resolved.

On February 14, 2005 appellant requested an oral hearing. He challenged the termination of his benefits on the grounds that he had not been provided with all of the photos and video taken as part of the employing establishment's investigation. Appellant also contended that the medical record established that his cervical condition was related to his employment injury and that he was still entitled to wage-loss benefits because of his accepted knee injury.

At the hearing held on June 30, 2006 appellant stated that the Office had erroneously terminated his wage-loss benefits for his accepted right knee condition when it terminated his lumbar strain benefits. He said that, at the time of his accepted lumbar injury, he also sustained cervical injury, which began causing pain as his lumbar spine condition improved. Appellant stated that he stopped working because his cervical spine was causing him too many problems and the Office was not authorizing treatment.

On August 9, 2006 appellant stated that a computerized tomography (CT) scan he provided on July 16, 2006 confirmed that he had two ruptured discs in his lower back.

By decision dated September 15, 2006, the Office hearing representative affirmed the termination of appellant's benefits.<sup>4</sup> He found that the Office had established that appellant's cervical and lumbar conditions were unrelated to his accepted lumbar sprain. The hearing representative noted that Dr. Baum never stated that appellant's preexisting spondylosis was aggravated by the accepted employment injury and did not provide any rationale relating the cervical condition to the accepted injury. He stated that Dr. Spitalny found no evidence of lumbar strain and indicated that all of appellant's symptoms were related to his underlying degenerative condition, which had been only temporarily aggravated by the employment injury.

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<sup>4</sup> The Office hearing representative referenced the records of appellant's other accepted medical conditions to provide context for his decision.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>5</sup> The Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to the employment injury.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. 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.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted appellant's claim for lumbosacral strain. The issue to be determined is whether the Office has met its burden of proof to establish that appellant had no remaining disability or residuals related to his accepted injury.

On June 29, 2004 Dr. Neil Spitalny, a Board-certified orthopedist, found that appellant's spine had 85 degrees of flexion, 20 degrees of right lateral rotation and 30 degrees of left lateral rotation and the reflexes in his ankles and knees were symmetrically decreased. He found that the radiographs showed little degenerative change at L4 with some L5-S1 disc space narrowing and normal alignment. Dr. Spitalny diagnosed chronic deconditioning syndrome based on mild to moderate lumbar spondylosis and previously existing degenerative disc disease. He opined that the cervical and lumbar disc disease was part of the normal aging process, but that appellant's preexisting back and knee problems made him more prone to lumbar strain. Dr. Spitalny found that appellant was not totally disabled from work, but recommended limiting his walking, standing and squatting because of his overall physical condition. He found that the aggravation of the underlying spondylosis was temporary and that appellant had ceased work in 2003 because of his unrelated neck and shoulder problems. In an August 26, 2004 supplement to his report, Dr. Spitalny stated that appellant had no work limitations related to his July 6, 2001 injury, but that, because of his other knee, shoulder and back conditions, he would be limited in his functional capacity. The Board finds that Dr. Spitalny's opinion is entitled to the weight of the medical opinion evidence because it is thorough and well reasoned and resolves the issues related to appellant's accepted employment injury.

The Board finds that Dr. Baum's reports are of diminished probative value. On September 4, 2003 Dr. Baum, a Board-certified orthopedic surgeon, reported that appellant had a history of pain associated with lumbar and cervical spondylosis, lumbar stenosis and a cervical disc herniation. He stated that he placed appellant on a four-hour work schedule in April 2002 because movement made his lower back pain worse. Dr. Baum removed appellant from work in July 2003 to allow him to complete physical therapy for his neck and lower back pain. He

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<sup>5</sup> *Elaine Sneed*, 56 ECAB \_\_\_\_ (Docket No. 04-2039, issued March 7, 2005).

<sup>6</sup> *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

<sup>7</sup> *James F. Weikel*, 54 ECAB 690 (2003).

explained that, while appellant's spondylosis and bilateral foraminal stenosis were preexisting conditions, they could have been aggravated by his employment duties. This opinion is speculative on the issue of causal relation. It is well established that speculative opinions are of diminished probative value. Dr. Baum also found that appellant's ability to function at work was compromised by his spinal condition. However, he did not provide a probative medical opinion as to whether appellant's condition was caused by or a residual of his accepted employment injury.

The Board finds that the Office met its burden of proof to establish that appellant had no remaining disability or residuals related to his accepted employment injury.

### **LEGAL PRECEDENT -- ISSUE 2**

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that he had disability causally related to his accepted injury.<sup>8</sup> He must submit rationalized medical evidence to establish the causal relationship between his continuing disability and the employment injury.<sup>9</sup> To be rationalized, the opinion must be based on a complete factual and medical background of the claimant,<sup>10</sup> and must be one of reasonable medical certainty,<sup>11</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>12</sup> Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

Following termination of his benefits, appellant submitted a CT scan conducted on June 19, 2006 that showed two ruptured discs in his lower back. He submitted no other medical evidence. Though the record does not contain the image of the CT scan, the Board finds that this evidence is insufficient to establish ongoing injury. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>14</sup> The CT scan does not explain the cause of appellant's disc ruptures. It is insufficient evidence to establish that appellant has ongoing disability or residuals causally related to the accepted employment injury.

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<sup>8</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>9</sup> *Id.*

<sup>10</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>11</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>12</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

<sup>13</sup> *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>14</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

The Board finds that appellant did not meet his burden of proof to establish that he has disability or residuals related to his accepted employment injury.

**CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation benefits, effective February 20, 2005, on the grounds that he had no disability or residuals causally related to his accepted employment injury of lumbosacral strain. The Board further finds that appellant has not established that he continues to have disability or residuals related to his accepted employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 18, 2006 is affirmed.

Issued: October 4, 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