

The issue is whether the Office properly terminated appellant's wage-loss compensation and medical benefits effective September 8, 2008.

## **FACTUAL HISTORY**

Appellant, a 50-year-old clerk, has an accepted traumatic injury claim for left rotator cuff strain and left glenoid labrum sprain, which arose on February 28, 2002.<sup>1</sup> She sustained a recurrence of disability on March 30, 2003 and has not worked since. The Office paid appellant appropriate wage-loss compensation following her March 2003 recurrence of disability.

By decision dated May 18, 2007, the Office terminated appellant's compensation effective March 30, 2007 because she neglected to work after suitable employment had been procured, offered and secured for her. In a decision dated January 7, 2008, the Branch of Hearings & Review reversed the May 18, 2007 decision, and directed that appellant's wage-loss compensation be reinstated retroactive to the date of termination. The hearing representative found that the Office relied on outdated medical evidence in determining that the offered position was medically suitable.<sup>2</sup> There was also an unresolved issue regarding the etiology of appellant's ongoing cervical condition.

Appellant claimed to have sustained injuries to her neck during a December 3, 2003 medical examination. An Office referral physician, Dr. Leonard R. Smith, reportedly applied too much pressure to appellant's head and neck during his December 3, 2003 physical examination.<sup>3</sup> Although appellant believed Dr. Smith was the cause of her cervical condition, her treating physician, Dr. Robert A. Alter, believed that the February 28, 2002 employment injury exacerbated a preexisting cervical condition.<sup>4</sup>

By letter dated March 24, 2008, the Office advised appellant that a cervical condition had not been accepted in relation to her February 28, 2002 employment injury. The Office further advised that a referee examination was scheduled with Dr. Michael Cohen, a Board-certified orthopedic surgeon, to determine, among other things, whether appellant sustained an injury to her cervical spine as a result of the February 28, 2000 employment incident, and if so, whether

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<sup>1</sup> Appellant had preexisting lumbar and cervical strains due to an employment-related motor vehicle accident on February 25, 2002 (File No. xxxxxx115). The February 28, 2002 left upper extremity injury occurred when appellant stumbled over some loose flooring material.

<sup>2</sup> The December 19, 2006 limited-duty job offer had been deemed medically suitable based on the results of an October 1, 2004 impartial medical evaluation conducted by Dr. David A. Hoffman, a Board-certified orthopedic surgeon.

<sup>3</sup> In a June 3, 2004 letter to the Office, appellant complained that, while she was seated in a low chair, Dr. Smith stood behind her and proceeded to put his weight down on her head until her neck pushed out to the left. She claimed that since Dr. Smith's December 3, 2003 examination she experienced additional pain and discomfort to her neck, shoulder, back and knees, with restricted and limited movement.

<sup>4</sup> Dr. Alter, a Board-certified internist, initially diagnosed cervical strain on March 18, 2002, which he attributed to the February 28, 2002 employment incident. He was unaware that appellant had sustained an employment-related cervical strain just three days prior to her February 28, 2002 injury. Regarding Dr. Smith's alleged contribution to appellant's cervical and upper back complaints, Dr. Alter stated in a July 21, 2004 report that he could not determine if appellant's symptoms were the result of Dr. Smith's examination.

she was totally disabled. An impartial medical evaluation was necessary in order to resolve a conflict between Dr. Alter and Dr. Smith.<sup>5</sup>

In a June 23, 2008 report, Dr. Cohen found that appellant's employment-related left shoulder injury had resolved. He indicated that appellant's complaints of pain in the left shoulder, neck and trapezius region were all subjective in nature. Dr. Cohen was unable to identify any positive physical findings to support a diagnosis that would explain appellant's pain or symptomatology. He explained that it was impossible to accurately assess appellant's current status because she demonstrated symptom magnification and subjective symptoms unsubstantiated by her objective findings. Dr. Cohen reviewed the diagnostic studies of record and found that appellant's cervical disc herniation was unrelated to her February 28, 2002 employment injury. Additionally, he indicated that there was no evidence to suggest that appellant's cervical condition was exacerbated by an Office-directed medical examination in December 2003. Dr. Cohen advised that appellant did not require any further treatment. In a July 7, 2008 supplemental report, he reiterated that there were no objective findings to support any ongoing conditions related to the events of February 28, 2002.

On July 29, 2008 the Office issued a proposed termination of compensation and medical benefits based on Dr. Cohen's impartial medical evaluation. It afforded appellant 30 days to submit additional evidence or argument to the extent she disagreed with the proposed termination of benefits. Appellant responded on August 25, 2008, noting that she had not received Dr. Cohen's reports. She requested a copy of his findings and the Office's latest statement of accepted facts. Appellant also asked that the Office postpone further action on the proposed termination until she had an opportunity to review and respond to the requested information.

In a September 8, 2008 decision, the Office terminated appellant's compensation and medical benefits effective that day. It explained that the notice of proposed termination discussed Dr. Cohen's opinion in detail. The Office noted that appellant waited approximately three weeks before advising it that she had not received Dr. Cohen's reports. Dr. Cohen's reports and the statement of accepted facts were enclosed with the September 8, 2008 final decision.

### **LEGAL PRECEDENT**

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>6</sup> Having determined that an employee has a disability

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<sup>5</sup> Dr. Smith, a Board-certified orthopedic surgeon, noted that his examination findings "may be compatible with a left rotator cuff strain," which had "improved with minimal evidence of any residual of injury." According to him, appellant had reached maximum medical improvement and was capable of performing full-time, limited-duty work. Dr. Smith also noted that there was no definitive need for any future treatment. He further indicated that appellant's symptoms appeared to be subjective in nature and there was "probably some ... symptom amplification." In an August 28, 2007 report, Dr. Alter noted that appellant had two injuries in February 2002; a left rotator cuff injury and a cervical strain. He also noted ongoing symptoms with respect to appellant's neck, left shoulder and left arm. Dr. Alter believed that, even if appellant returned to her position with limitations, her pain symptoms would worsen. He reiterated that appellant "was disabled with regard to working."

<sup>6</sup> *Curtis Hall*, 45 ECAB 316 (1994).

causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>7</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>8</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>9</sup>

### ANALYSIS

At oral argument appellant questioned the Office's decision to refer her for an impartial medical evaluation. She contended that the Office was doctor shopping. The Board notes that the Office properly found there was a conflict of medical opinion between appellant's physician, Dr. Adler, and the Office referral physician, Dr. Smith. Because of this conflict, the Office properly referred appellant to an impartial medical examiner to resolve the issue of whether there were any residuals of the accepted employment injury.<sup>10</sup> Dr. Cohen, the impartial medical examiner, conducted a thorough examination, setting forth his findings on evaluation of appellant's left shoulder and reviewing the diagnostic studies of record. He found that appellant no longer had an employment-related left shoulder injury. Dr. Cohen was unable to identify any positive physical findings to support appellant's subjective complaints and he indicated there was evidence of symptom magnification. He believed that appellant did not require any further treatment. In his supplemental report, Dr. Cohen reiterated that there were no objective findings to support any ongoing conditions related to the events of February 28, 2002.

The Board finds that the Office properly accorded determinative weight to Dr. Cohen's findings as the impartial medical examiner.<sup>11</sup> Dr. Cohen's opinion is sufficiently well reasoned and based upon a proper factual background. The Office met its burden of proof to terminate appellant's compensation and medical benefits with respect to the accepted conditions of left rotator cuff strain and left glenoid labrum sprain.

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<sup>7</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>8</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>9</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

<sup>10</sup> The Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a) (2006); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

<sup>11</sup> Where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>12</sup> Appellant contends that Dr. Smith injured her neck and other areas of her body when he examined her on December 3, 2003. Dr. Alter, appellant's treating physician, indicated that the February 28, 2002 employment incident exacerbated her preexisting cervical condition.

Although the Office asked the impartial medical examiner to address whether appellant's cervical condition was causally related to her February 28, 2002 employment injury, at the time of the referral there was no conflict of medical opinion on that particular issue. The two previous physicians selected by the Office, Dr. Smith and Dr. Hoffman, did not offer an opinion regarding the etiology of appellant's cervical condition.<sup>13</sup> Thus, Dr. Alter's belief that the February 28, 2002 employment incident exacerbated appellant's preexisting cervical condition was not contradicted by an Office-appointed physician; at least not until Dr. Cohen, the latest impartial medical examiner, renders an opinion on this issue.

Appellant's belief that Dr. Smith injured her neck is unsubstantiated. Her own treating physician stated that he could not determine if appellant's symptoms were the result of Dr. Smith's examination. Additionally, Dr. Cohen indicated that there was no evidence to suggest that appellant's cervical condition was exacerbated by an Office-directed medical examination in December 2003. Accordingly, the medical evidence does not establish that Dr. Smith either caused or contributed to appellant's current cervical condition.

As to whether the February 28, 2002 employment incident played a role in appellant's current cervical condition, Dr. Cohen found that it did not. He specifically noted that appellant's cervical disc herniation was unrelated to her February 28, 2002 employment injury. Dr. Cohen explained that the C6-7 disc herniation that was evident on a January 2005 cervical MRI scan was not present on a March 2003 cervical MRI scan. In light of this fact, Dr. Cohen stated that appellant's disc herniation "clearly occurred at some point over a year after the incident in question."

Dr. Alter first diagnosed cervical strain on March 18, 2002. On a Form CA-20 (attending physician's report), he checked the appropriate box attributing appellant's diagnosed conditions

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<sup>12</sup> *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

<sup>13</sup> When Dr. Hoffman initially examined appellant on October 1, 2004, the only definitive diagnosis he offered was mild adhesive capsulitis of the left shoulder. He also noted "possible cervical nerve root syndrome C5-6, left upper extremity. Dr. Hoffman subsequently reviewed a January 3, 2005 cervical magnetic resonance imaging (MRI) scan, which revealed a minor broad-based disc bulge at C5-6 and a disc herniation at C6-7. He explained that the MRI scan findings at C6-7 were inconsistent with his prior physical examination findings. Dr. Hoffman did not otherwise comment on the cause of appellant's cervical condition at that time.

to her employment.<sup>14</sup> However, Dr. Alter did not provided a narrative explaining the basis for his opinion on causal relationship. Moreover, he was unaware at the time that appellant sustained a cervical strain on February 25, 2002 when she was involved in a motor vehicle accident (MVA). In a May 8, 2007 report, Dr. Alter acknowledged that he was unaware of appellant's February 25, 2002 MVA when he diagnosed a cervical strain on March 18, 2002. He explained that, after reviewing information regarding appellant's February 25, 2002 injuries, he was "quite certain that the injury of February 28[, 2002] exacerbated the preexisting cervical injury from February 25[, 2002]...." Dr. Alter's latest opinion on causal relationship is no more enlightening than his March 18, 2002 report. In neither instance did he elaborate on what particular factors allowed him to conclude with a level of certainty that the February 28, 2002 employment incident either caused or contributed to appellant's cervical condition. Because Dr. Alter failed to explain the nature of the relationship between the diagnosed cervical condition and the February 28, 2002 employment incident, his opinion on causal relationship cannot be considered rationalized.<sup>15</sup>

Appellant failed to establish that her diagnosed cervical condition was either a direct result of the February 28, 2002 employment injury or a consequence of Dr. Smith's December 3, 2003 Office-directed examination. Accordingly, the Office properly declined to expand the current claim to include either cervical strain or cervical disc herniation as accepted conditions. Furthermore, it properly terminated appellant's wage-loss compensation and medical benefits based on Dr. Cohen's impartial medical evaluation.

### **CONCLUSION**

The Office met its burden to terminate compensation and medical benefits effective September 8, 2008.

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<sup>14</sup> Item number 8 on Form CA-20 asks: "Do you believe the condition found was caused or aggravated by an employment activity?" The question is followed by a parenthetical directing the physician to "Please explain answer." Dr. Alter checked the "Yes" box signifying a causal relationship, but he did not otherwise elaborate.

<sup>15</sup> *Victor J. Woodhams*, *supra* note 12.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 8, 2008 decision of the Office of Workers' Compensation Program is affirmed.

Issued: April 22, 2009  
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