



third finger of the left hand and hepatitis C.<sup>2</sup> Appellant began receiving compensation for temporary total disability.

In a work capacity evaluation (OWCP-5c) dated November 4, 2003, the attending physician, Dr. Paul Killenberg, stated that the hepatitis C had been cured. He noted that appellant was having joint symptoms not due to chronic hepatitis C. Dr. Killenberg provided work restrictions, such as two hours standing per day, and indicated the restrictions would apply “until rehab[ilitation] of arthropathy.” By report dated December 17, 2003, Dr. Rex McCallum, a rheumatologist, noted that appellant had been treated for hepatitis C with alfa interferon. He reported “intermittent neuropathy secondary to hepatitis C and alfa interferon.” Dr. McCallum provided results on examination and concluded that appellant most likely had fibromyalgia. Appellant also submitted reports from a Dr. Ruth Guyer commencing November 22, 2005 diagnosing fibromyalgia.

The Office referred appellant, medical records and a statement of accepted facts to a Dr. Obiefuna P. Okoye. In a report dated November 1, 2007, Dr. Okoye provided a history and results on examination. He diagnosed “chronic hepatitis C, treated,” fibromyalgia by history and degenerative joint disease. Dr. Okoye concluded that appellant had been treated for hepatitis C, and could stand or walk for at least four to six hours provided she had routine breaks.

In an OWCP-5c dated November 8, 2007, Dr. Okoye stated that appellant “has arthropathy which may or may not be related to medication used for her hepatitis C.” In a report dated November 9, 2007, Dr. Okoye, in response to a question as to whether the accepted condition was still active, stated that the hepatitis C had been treated. He indicated that appellant could work with restriction and again stated that appellant had arthropathy that may or may not be related to the medication used for hepatitis C.

In a report dated November 16, 2007, the Office medical adviser opined that there were no residuals of the hepatitis C. He attributed the generalized joint pain to an age-related process. Dr. Okoye submitted an additional report dated November 20, 2007, stating that appellant completed her hepatitis C treatment in June 2003.

By letter dated January 3, 2008, the Office advised appellant that it proposed to terminate her compensation for wage-loss and medical benefits. Appellant submitted a January 23, 2008 letter stating that, while she did not dispute she was no longer infected with hepatitis C, she felt the current symptoms were related to the infection or the medication used to treat the condition.

By decision dated February 7, 2008, the Office terminated compensation for wage-loss and medical benefits effective February 17, 2008. Appellant requested a review of the written record. In a decision dated May 16, 2008, the Office hearing representative affirmed the February 7, 2008 decision. With respect to arthropathy or fibromyalgia, the hearing representative found Dr. Okoye’s opinion was equivocal and not sufficient to establish causal relationship.

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<sup>2</sup> The accepted condition was subsequently described as an open wound of the finger.

## LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>3</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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>4</sup>

## ANALYSIS

The accepted conditions in this case were the needle prick to the third finger of the left hand and hepatitis C. The medical evidence clearly indicated that these conditions had resolved prior to February 17, 2008. Appellant's physician, Dr. Killenberg, indicated on November 4, 2003 that the hepatitis C had been cured. The second opinion physician, Dr. Okoye, indicated that the hepatitis C had previously been treated and his reports do not indicate any continuing hepatitis condition. An Office medical adviser also opined that the condition had resolved, and appellant herself does not dispute that she no longer has hepatitis C.

Based on the medical evidence of record, the Board finds the Office met its burden of proof to terminate compensation for wage-loss and medical benefits based on the accepted conditions.

The May 16, 2008 decision, however, raises another issue. Appellant has contended that she developed a consequential injury from her accepted condition or the medication used to treat the hepatitis C. It is well established that every natural consequence that flows from the employment injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause.<sup>5</sup> The second opinion physician, Dr. Okoye, in responding to the Office's inquiry as to work restrictions, stated that appellant has an arthropathy condition that "may or may not" be related to the hepatitis C medication. While the hearing representative is correct that this opinion is equivocal, Dr. Okoye is a second opinion physician, not an attending physician. Since the Office referred appellant to Dr. Okoye it has the responsibility to secure a probative medical report resolving the issue.<sup>6</sup>

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<sup>3</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>5</sup> *See Kathy A. Kelley*, 55 ECAB 206 (2004). It is appellant's burden of proof to establish a consequential injury. *Id.*

<sup>6</sup> *See Robert Kirby*, 51 ECAB 474, 476 (2000); *Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981). *Compare Charles W. Downey*, 54 ECAB 421 (2003), where the second opinion referral physician provided a rationalized opinion that the claimant's diabetes condition was not a consequence of his employment injuries.

The case will be remanded to the Office for additional development on the issue of whether appellant developed a consequential injury as a result of the accepted hepatitis C or treating medication. After such further development as the Office deems necessary, it should issue an appropriate decision.

**CONCLUSION**

The Office met its burden of proof to termination compensation for the accepted employment injuries. The case is remanded for further development on the issue of whether appellant developed an arthropathy or other condition as a consequence of her employment injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 16, 2008 and February 7, 2008 are affirmed with respect to termination of compensation. The case is remanded for further development on the issue of whether appellant developed an additional employment-related injury.

Issued: February 9, 2009  
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