



2007 and returned to full-time limited-duty work June 27, 2007. He received compensation for all appropriate periods.

In a September 25, 2007 report, Dr. Eric Troyer, a Board-certified family practitioner, stated that appellant had numbness in the right arm and leg that began months ago and was associated with intermittent pain. He diagnosed depression (new); neuropathy (uncontrolled); arthritis unspecified (uncontrolled); back pain (uncontrolled).

In an October 17, 2007 report, Dr. T. Kern Carlton, a Board-certified in pain medicine and physiatry, noted that appellant had a mildly decreased range of motion in his spine, but was intact neurologically. Straight leg raising was negative for radicular pain. Appellant was noted to be tender in the midline in the lumbar and thoracic region. The following impressions were provided: lumbar strain, thoracic strain, mild congenital canal narrowing and small disc herniations at T7-8 and T8-9; congenital canal narrowing and mild spondylosis at L3-4 and L4-5 by magnetic resonance imaging (MRI) scan; noninsulin dependent diabetes mellitus; and cervical strain. Dr. Carlton advised appellant reached maximum medical improvement with regards to his back. He indicated that appellant got his medications from Dr. Troyer and he should continue with the transcutaneous electrical nerve stimulator unit, physical therapy and his light-duty work restrictions.

The Office referred appellant, together with a statement of accepted facts and the entire medical record, to Dr. Surendrapal Singh Mac, a Board-certified orthopedic surgeon, for a second opinion examination, who was asked to render an opinion as to whether appellant continued to experience residuals from his accepted injury and, if so, whether he was capable of resuming his date-of-injury position. In a January 11, 2008 report, Dr. Mac provided a history of injury and treatment, a review of the medical records and examination findings. He advised x-rays of the cervical and lumbar spine showed mild degenerative changes. Dr. Mac noted that appellant had tenderness over the midcervical area and painful movements of the cervical spine. Neurological examination of the arms revealed bilaterally equal deep tendon reflexes. On sensory examination with pinwheel of the upper extremities, appellant claimed to have diminished sensation over left arm with no typical nerve or root distribution. Motor examination revealed no muscle wasting, normal motor power and grip strength of 5 pounds on right and 20 pounds on left by dynamometer. Examination of back revealed no swelling or deformity, but appellant had tenderness over the lumbar area and painful movements of the lumbar spine. Straight leg testing was negative.

On neurological examination of the lower extremities, appellant claimed diminished sensation over the left leg, without any associated nerve or root distribution to the areas of numbness. Appellant had a diminished left knee ankle jerk bilaterally. Motor power was normal. Dr. Mac diagnosed resolved cervical strain, resolved lumbar strain, cervical spondylosis and degenerative arthritis lumbar spine. He opined that appellant had no residuals and no physical limitations from his accepted conditions and residual symptoms were from cervical spondylosis and degenerative arthritis of the lumbar spine. In an attached work capacity evaluation dated January 22, 2008, Dr. Mac opined that he was capable of returning to his date-of-injury position with restrictions for six months duration.

By letters dated January 29, 2008, the Office requested Drs. Carlton and Troyer to review Dr. Mac's report and provide comments on his opinion that appellant's accepted conditions of lumbar and cervical sprains had resolved and his ongoing symptoms resulted from a congenital cervical spinal stenosis and degenerative arthritis of the lumbar spine.

In February 1 and 25, 2008 progress notes, Dr. Troyer continued to treat appellant for lower back pain. An assessment of depression and myalgia was also provided. In a February 19, 2008 work capacity evaluation form, Dr. Troyer advised that appellant was unable to perform his usual job, but was capable of working with restrictions for an undetermined duration. He further advised that appellant had not reached maximum medical improvement.

On March 7, 2008 the Office proposed to terminate all compensation benefits based on Dr. Mac's report, which it found constituted the weight of the medical evidence. Appellant was provided 30 days within which to provide additional evidence or argument.

In an April 7, 2008 letter, appellant's counsel opposed the Office's decision to terminate compensation benefits. He presented a timeline of medical appointments for the period December 12, 2007 through February 25, 2008 appellant made with his treating physician regarding medical complaints and treatment for low back pain and prescribed medications. Counsel argued that a consultant examination covering less than two hours time versus a six-month consistent history cannot be a legitimate basis for discontinuing coverage.

Copies of Dr. Troyer's office notes dated September 12 and 25, October 10 and November 11, 2007, January 9 and 16, February 1 and 25 and March 12, 2008 were provided. The progress notes reflect that appellant was on continued medications for back pain. Assessments of depression and myalgia were also provided. A copy of a March 13, 2007 x-ray of the right ribs was also provided

In a December 14, 2007 progress note, Dr. Carlton continued to diagnose lumbar strain, thoracic strain, mild congenital canal narrowing and small disc herniations at T7-8 and T8-9; congenital canal narrowing and mild spondylosis at L3-4 and L4-5 by MRI scan; noninsulin dependent diabetes mellitus; and cervical strain.<sup>1</sup>

On May 14, 2008 the Office requested that Dr. Mac clarify whether appellant's conditions of spondylosis and degenerative arthritis were temporary or permanent and whether the need for work tolerance limitations and recommendations for treatment were related to the accepted conditions. In a May 19, 2008 report, Dr. Mac opined that appellant's spondylosis and degenerative arthritis conditions were permanent and the work injury of January 24, 2007 more likely than not caused an aggravation of the conditions. He stated it was a well-known fact that any injury can cause aggravation of arthritis and, if the arthritis is silent, it can cause it to become symptomatic. Dr. Mac opined that appellant was capable of performing his usual job. He advised the limitations he placed on appellant were not required in the performance of his usual job and were for the conditions of cervical spondylosis and degenerative arthritis of the lumbar spine. Dr. Mac further recommended appellant continue with conservative treatment and anti-

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<sup>1</sup> Dr. Carlton also provided a permanent partial impairment rating for appellant's right lower extremity. Matters regarding a schedule award are not before the Board on the present appeal.

inflammatory medications and home physical therapy modalities for his cervical spondylosis and degenerative arthritis of the lumbar spine conditions.

By decision dated July 11, 2008, the Office finalized its termination of appellant's compensation benefits effective May 9, 2008. On August 8, 2008 appellant requested a review of the written record. By decision dated January 9, 2009, the Office affirmed its previous decision, finding that the weight of the medical opinion evidence remained with Dr. Mac.

### **LEGAL PRECEDENT**

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> It may not terminate compensation without establishing that disability has ceased or that it is no longer related to the employment injury.<sup>3</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</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>5</sup>

Under the Federal Employees' Compensation Act,<sup>6</sup> when employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>7</sup> When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.<sup>8</sup>

### **ANALYSIS**

The Office accepted appellant's claim for lumbar strain and cervical strain and paid appropriate compensation and medical benefits. By decision dated July 11, 2008, it terminated his compensation benefits effective May 9, 2008 on the basis that the weight of the medical opinion evidence rested with Dr. Mac, an Office referral physician. This decision was affirmed by an Office hearing representative in a January 9, 2009 decision.

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<sup>2</sup> *Elaine Sneed*, 56 ECAB 373 (2005).

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

<sup>4</sup> *See Del K. Rykert*, 40 ECAB 284 (1988).

<sup>5</sup> *James F. Weikel*, 54 ECAB 690 (2003).

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *Raymond W. Behrens*, 50 ECAB 221, 222 (1999); *James L. Hearn*, 29 ECAB 278, 287 (1978).

<sup>8</sup> *Id.*

The Board finds that the Office improperly terminated appellant's compensation benefits. In his January 11, 2008 report, Dr. Mac diagnosed resolved cervical strain, resolved lumbar strain, cervical spondylosis and degenerative arthritis lumbar spine. He opined that appellant had no residuals and no physical limitations from his accepted conditions and his ongoing symptoms and work restrictions resulted from congenital cervical spinal stenosis and degenerative arthritis of the lumbar spine. However, the Board notes that Dr. Mac, in addressing causal relationship provided little medical rationale to support his conclusory opinion regarding whether appellant's accepted conditions had resolved. Dr. Mac merely stated a conclusion without explaining how the conclusion was supported by his examination or the medical evidence in the record. As noted, part of the Office's burden of proof in terminating compensation benefits includes furnishing rationalized medical opinion evidence.

Furthermore, in response to the Office's request for clarification, Dr. Mac opined, in a May 19, 2008 report, that the January 24, 2007 accepted work injury had aggravated appellant's spondylosis and degenerative arthritic conditions. As noted above, when employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>9</sup> Dr. Mac did not provide an opinion as to whether the aggravation of appellant's underlying spondylosis and degenerative arthritic conditions, caused by his work injury, was permanent or temporary.

Consequently, Dr. Mac's opinion is insufficient to meet the Office's burden of proof. His initial report provided little medical rationale in support of his opinion on causal relationship and his supplemental report suggests that appellant has an ongoing employment-related aggravation of spondylosis and arthritis. Absent rationalized medical evidence supporting that appellant's employment-related conditions had resolved without residual, the Office did not meet its burden of proof to terminate compensation benefits.

### **CONCLUSION**

The Board finds that the Office has not met its burden of proof in terminating appellant's compensation and medical benefits effective May 9, 2008.

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 9, 2009 decision of the Office of Workers' Compensation Programs is reversed.

Issued: February 24, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board