

In an August 15, 2008 report, Dr. Alexander S. Bailey, an attending Board-certified orthopedic surgeon, noted that appellant's primary problem following the August 28, 2003 employment injury was cervical spine abnormalities with secondary low back symptomatology. She had multilevel degenerative disc disease with varied degrees of pain generation from C3-4 through C6-7 and multilevel spinal stenosis. Appellant had multilevel degenerative disc disease in the lumbar spine that progressed to include spinal stenosis, disc herniations and worsening back and leg pain.

On August 21, 2008 Dr. Patrick B. Harr, an attending family practitioner, noted that, for five years following the August 28, 2003 employment injury, appellant experienced chronic cervical and lumbar problems. Appellant's lumbar spine pain was caused by a herniated disc. Her cervical pain was caused by a herniated disc and spinal stenosis. The pain was not alleviated by epidural steroids or physical therapy.

The Office referred appellant to Dr. Anil K. Agarwal, a Board-certified orthopedic surgeon, who was provided with a statement of accepted facts and the case file. On November 19, 2008 Dr. Agarwal reviewed the medical history and provided detailed findings on physical examination. Appellant's neck was supple without lymphadenopathy or thyromegaly. There were no sensory deficits in the extremities. Range of motion of the upper and lower extremities was normal. Deep tendon reflexes were normal. Examination of the cervical spine was normal with the exception of some stiffness and tenderness. Examination of the left shoulder was essentially normal with a slight deficit in abduction and adduction and internal and external rotation in range of motion. X-rays of the cervical spine revealed moderate to severe degenerative changes in the lower cervical vertebrae. There were no fractures or dislocation. Diagnoses related to the August 28, 2003 employment injury included temporary aggravations of left shoulder tendinitis and cervical strain and coccyx contusion, all resolved. Preexisting conditions and other conditions not related to appellant's employment included chronic cervical and lumbar degenerative disc disease, chronic degenerative left shoulder acromioclavicular joint arthritis and bilateral carpal tunnel syndrome.

On December 3, 2008 Dr. Bailey stated that Dr. Agarwal's report was accurate and he agreed with the physician's findings. Appellant had a significant degenerative condition in both her cervical and lumbar spine and a temporary aggravation of preexisting cervical and lumbar spine problems.

By letter dated January 15, 2009, the Office advised appellant of its proposed termination of her wage-loss compensation and medical benefits on the grounds that the weight of the medical evidence, represented by the opinion of Dr. Agarwal, established that she had no remaining disability or medical condition causally related to her August 28, 2003 employment injury. It noted that Dr. Bailey had agreed with Dr. Agarwal's findings and conclusions.

On February 25, 2009 the Office issued a final decision terminating appellant's wage-loss compensation and medical benefits effective that date.

On March 5, 2009 appellant requested a hearing that was held on May 29, 2009. By decision dated July 24, 2009, the Office affirmed the February 25, 2009 termination decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ It may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³ Furthermore, 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 a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁴

ANALYSIS

Appellant's claim was accepted for coccyx and left shoulder contusions, a left elbow abrasion and a cervical strain. She was treated by Dr. Bailey for multilevel degenerative disc disease.

Dr. Agarwal was provided with a statement of accepted facts and the case file. In a 28-page report, he reviewed the medical history in detail and provided findings on physical examination. On November 19, 2008 Dr. Agarwal reviewed the medical history and provided detailed findings on physical examination. Appellant's neck was supple without lymphadenopathy or thyromegaly. There were no sensory deficits in the extremities. Range of motion of the upper and lower extremities was normal. Deep tendon reflexes were normal. Examination of the cervical spine was normal with the exception of some stiffness and tenderness. Examination of the left shoulder was essentially normal with a slight deficit some aspects of range of motion. X-rays of the cervical spine revealed moderate to severe degenerative changes in the lower cervical vertebrae. There were no fractures or dislocation. Diagnoses related to the August 28, 2003 employment injury included temporary aggravations of left shoulder tendinitis and cervical strain and coccyx contusion, all resolved. Preexisting conditions and other conditions not related to appellant's employment included chronic cervical and lumbar degenerative disc disease, chronic degenerative left shoulder acromioclavicular joint arthritis and bilateral carpal tunnel syndrome.

The Board notes that Dr. Agarwal found that appellant's August 28, 2003 accepted coccyx and left shoulder contusions, left elbow abrasion and cervical strain had all resolved. Dr. Agarwal provided a comprehensive report with a thorough review of appellant's medical history. His report is based upon a complete and accurate factual and medical background and detailed findings on physical examination. The Board finds that Dr. Agarwal's thorough and well-rationalized report established that appellant had no continuing disability or residuals

¹ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

² *J.M.*, 58 ECAB 478 (2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ *T.P.*, 58 ECAB 524 (2007); *Larry Warner*, 43 ECAB 1027 (1992).

⁴ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

causally related to her accepted coccyx and left shoulder contusions, left elbow abrasion and cervical strain. The Board notes that Dr. Bailey concurred with Dr. Agarwal's findings and stated conclusions. Accordingly, the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective February 25, 2009 based on the medical opinions of Dr. Agarwal and Dr. Bailey that appellant's accepted back and left upper extremity conditions had resolved.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective February 25, 2009.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 24, 2009 is affirmed.

Issued: June 9, 2010
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