



approved an anterior cervical fusion at C6-7. All appropriate benefits were paid and appellant was eventually placed on the periodic compensation rolls.

In a January 3, 2001 OWCP-5c work capacity evaluation form, Dr. George Gomez-Delrio, appellant's treating physician, advised that he was able to work light duty eight hours a day with permanent restrictions of no twisting of neck in any activity.<sup>1</sup>

On June 12, 2002 the Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. Jack Gresham, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a June 13, 2002 report, Dr. Gresham noted that the examination of June 12, 2002 was limited to the cervical spine. A normal symmetrical development of the musculature of both shoulders and arms was noted. Range of motion to the head and neck was limited to an approximate fifty (50) percent of an expected normal range, with complaints of neck pain at the extreme noted in all directions with no radiating pain into either upper extremity. There was no evident neurologic deficit in the upper extremities and good grip strength and normal manual dexterity to all fingers of both hands was noted. A review of the diagnostic tests of the cervical spine revealed moderately severe degenerative changes in the mid and lower levels, with no other active process of structural abnormality noted or evidence of a fusion at any level. Dr. Gresham diagnosed moderately severe spondylosis in the mid and lower cervical spine without neurologic deficit; failed anterior cervical fusion; and psychophysiological musculoskeletal reaction. Dr. Gresham opined that the cervical strain and the herniated nucleus pulposus at C6-7 sustained in the September 25, 1991 injury had resolved and that, from an objective physical capacities perspective, appellant was able to return to his usual occupation of warehouse work without any restrictions as a result of the work-related injury. He opined, however, that appellant could not return to work from an overall health perspective as he was entrenched in the disability process with possibly other health problems. Dr. Gresham opined that, although appellant may have suffered a minor soft tissue injury to his neck area in the work incident and irritated an underlying asymptomatic condition, he did not suffer any permanent aggravation or worsening of that condition as a result of the September 25, 1991 incident. He further opined that appellant's symptomatic complaints with regard to the September 25, 1991 work incident were related entirely to a secondary gain. In a June 12, 2002 work capacity evaluation form, Dr. Gresham opined that appellant could work eight hours a day. He noted, however, that consideration needed to be given to appellant's degenerative cervical spondylosis which was without neurologic deficit.

On July 29, 2002 the Office issued a notice of proposed termination of compensation for wage-loss and medical benefits based on the second opinion report of Dr. Gresham who found no residuals of the September 25, 2001 work-related injury.

In his August 13, 2002 letter, appellant advised that he experienced constant pain in his neck. He also indicated that Dr. Gresham had spent a total of five minutes with him, which comprised of him moving his head in various directions and grabbing the physician's hands, before he received x-rays of his neck. He stated that the physician never once inquired about his neck pain.

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<sup>1</sup> Dr. Gomez-Delrio's credentials are not of record.

In a September 6, 2002 work capacity evaluation form, Dr. Kevin Ditinick opined that appellant was totally disabled from working due to severe cervical spine and disc degeneration.<sup>2</sup>

In an October 16, 2002 work capacity evaluation form, Dr. Gomez-Delrio advised that appellant was capable of working eight hours a day, but could not perform reaching, twisting or turning of the neck. He noted that a repeat C-spine magnetic resonance imaging (MRI) scan was scheduled.

In a December 10, 2002 letter, the Office requested Dr. Gomez-Delrio to review Dr. Gresham's examination and to advise whether he concurred with the second opinion physician in regard to work restrictions or provide rationale for any differences of opinion. On January 13, 2003 the Office was informed by Dr. Delrio's clinic at the Veterans Administration Hospital that "our doctors will not complete form."

By decision dated January 27, 2003, the Office terminated appellant's compensation and medical benefits effective January 26, 2003.

In a February 11, 2003 letter, appellant requested a hearing, which was held on October 20, 2003. Appellant reiterated that Dr. Gresham performed a limited examination and had never inquired about his neck pain. In a June 11, 2003 report, Dr. Jonathan T. Paine, a Board-certified neurological surgeon, advised that he had performed an anterior cervical discectomy and fusion on appellant at C6-7. Examination findings were noted. Appellant's imaging studies revealed cervical spondylosis at C3-4, C4-5 and C5-6. The C6-7 level, the level of the prior surgery, was without significant disease. Dr. Paine opined that, although appellant complained of intermittent inability to feel his legs, there was not sufficient impression on the nervous system in the cervical MRI scan to account for that. A course of cervical traction, as well as lumbar MRI scanning were recommended. In a September 30, 2003 letter, Dr. Paine stated that any residual systems related to the accident of September 25, 1991 would be best assessed by discussion with appellant. He noted that the April 21, 2003 cervical MRI scan disclosed appropriate decompression at the level of the prior surgery. Dr. Paine advised that, "if the patient has had persistent symptoms since the time of his accident, I would ascribe his current difficulties to the above in the absence of coexisting history of injury."

In an October 21, 2003 letter, appellant's attorney argued that the Office should not accord Dr. Gresham's report any significant weight and submitted numerous cases involving clients of his where Dr. Gresham had been an examining physician and had determined no causal relationship. Progress notes from Dr. Gomez-Delrio were also submitted. An October 21, 2002 MRI scan report noted an impression of diffuse cervical spondylosis without significant central stenosis and bilateral foraminal narrowing at C4-5, C5-6 and C6-7 due to spondylitic bar formation combined with hypertrophy of the uncovertebral joint.

By decision dated January 2, 2004, an Office hearing representative affirmed the January 27, 2003 decision.

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<sup>2</sup> Dr. Ditinick's credentials are not of file.

On appeal appellant's attorney requests that the case be reversed on the grounds that Dr. Gresham's report was deficient and that the hearing representative failed to consider Dr. Paine's opinion. In the alternative, the attorney requests that a conflict of medical opinion be found.

### **LEGAL PRECEDENT**

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>3</sup> Having determined that an employee has a disability 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>4</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>5</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>6</sup>

### **ANALYSIS**

On June 13, 2002 Dr. Gresham, a Board-certified orthopedic surgeon and a second opinion physician, provided a thorough, well-reasoned and exhaustive medical review of appellant's record and a complete and detailed physical examination of appellant's cervical spine. He found that appellant had 50 percent of the expected range of motion to his head and neck with no radiating pain or evidence of neurologic deficit in either upper extremity. Dr. Gresham further noted that the diagnostic tests of the cervical spine revealed moderately severe degenerative changes with no structural abnormality or evidence of a fusion at any level. He diagnosed moderately severe spondylosis in the mid and lower cervical spine without neurologic deficit; failed anterior cervical fusion; and psychophysiological musculoskeletal reaction. He opined that appellant did not suffer any permanent aggravation or worsening of his preexisting degenerative cervical spondylosis and that the cervical strain and herniated nucleus pulposus at C6-7 sustained in the work injury had resolved. He further opined that, from an objective physical capacities perspective, appellant could return to his usual occupation without any restrictions as a result of the work-related injury but that consideration needed to be given to appellant's degenerative cervical spondylosis.

The Board notes that Dr. Gomez-Delrio, appellant's treating physician, did not respond to the Office's request to review Dr. Gresham's opinion, but had advised that appellant was able to work light duty eight hours a day with permanent restrictions on his neck movement. However, the physician made no determination as to whether the restrictions on appellant's neck were the result of the accepted work incident of September 25, 1991 or were due to his preexisting cervical spondylosis. The Board has held that to establish causal relationship between the

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<sup>3</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>4</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>5</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>6</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.<sup>7</sup> Although Dr. Ditinick opined that appellant was totally disabled due to severe cervical spine and disc degeneration, he provided no opinion or medical rationale describing or explaining a causal relationship between appellant's current condition and the work incident of September 25, 1991. Thus, Dr. Ditinick's opinion is insufficient to cause a conflict with Dr. Gresham's opinion.

The Board finds that the weight of the medical evidence is represented by the second opinion physician, Dr. Gresham, who provided a comprehensive report based on a review of appellant's medical records, a statement of accepted facts and a complete examination. Appellant did not submit any reports from his treating physicians containing any rationale that would establish a causal relationship between his degenerative cervical spondylosis condition, his failed anterior cervical fusion and his employment injury. Although appellant took exception to Dr. Gresham's report, the Board finds that his opinion is well rationalized and based upon an accurate medical history. There is no support for appellant's allegation that Dr. Gresham performed "almost no examination" as the physician clearly set forth his examination findings on his cervical examination. Also, there is no showing of impropriety in the Office's selection of Dr. Gresham as the second opinion examiner. Accordingly, the Board finds that Dr. Gresham's opinion constitutes the weight of the medical evidence regarding the termination effective January 26, 2003.

The Board further finds that appellant has submitted no medical evidence which is sufficient to overcome or cause conflict with the weight attributed to Dr. Gresham's report. Dr. Paine noted that appellant had cervical spondylosis at C3-4, C4-5 and C5-6, but he offered no opinion as to whether this condition, which the record reflects was preexisting to the work injury, was related to or had been permanently aggravated by appellant's September 25, 1991 work injury. Thus, his conclusion that he would ascribe appellant's current difficulties to the work accident in the absence of a coexisting history of injury is not well rationalized and can not be afforded equal or greater weight than Dr. Gresham's medical opinion. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.<sup>8</sup> Accordingly, Dr. Paine's opinion has little probative value and is insufficient to cause conflict with Dr. Gresham's report.

### **CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation and medical benefits effective January 26, 2003 on the basis that he no longer had any continuing disability or residuals due to his accepted employment injury of September 25, 1991.

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<sup>7</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>8</sup> *Douglas M. McQuaid*, 52 ECAB 382 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 2, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member