

more than a 30 percent impairment of his right upper extremity due to carpal tunnel syndrome, for which he received a schedule award issued June 25, 1996.² He filed a second appeal with the Board on August 4, 2003 from a June 9, 2003 decision of the Office's Branch of Hearings and Review which affirmed a July 29, 2002 decision terminating his medical benefits on the grounds that he no longer had residuals of his accepted condition. By decision dated December 3, 2003,³ the Board remanded the record to the Office for reconstruction of the case as the copy of the June 9, 2003 decision of record was incomplete. On remand, the Office reissued the June 9, 2003 decision on December 23, 2003. Appellant filed his third appeal with the Board on November 23, 2004 from the December 23, 2003 decision of the Office. He contended that the Office's termination of his medical benefits as of July 29, 2002 was erroneous as he continued to experience residuals of the accepted employment-related conditions.

The Office accepted that on September 18, 1987 appellant, then a 36-year-old mail handler, sustained cervical, occipital and thoracic strains and bilateral temporomandibular joint (TMJ) syndrome when a 40-pound sack of mail fell 2 feet, striking him in the back of the head.⁴ Appellant had intermittent work absences through March 11, 1996, when he stopped work due to spinal stenosis.⁵ The Office accepted a consequential duodenal ulcer due to anti-inflammatory medications and a lumbar strain on March 26, 1999 due to using a prescribed treadmill. After intermittent absences, appellant returned to full-duty work.

Appellant submitted treatment notes dated 1990 to May 1997 from Dr. David A. Suber, an attending Board-certified psychiatrist and neurologist.⁶ Dr. Suber diagnosed chronic pain syndrome, degenerative joint disease, a cervical strain, chronic cervical and lumbar pain, cervical stenosis, muscle contraction headaches and TMJ syndrome. Dr. Suber opined that these conditions were related to the accepted injuries. He also diagnosed Reiter's syndrome, lumbar stenosis and anemia as unrelated to appellant's federal employment. In a February 19, 1997 report, Dr. Suber noted that electromyography (EMG) and nerve conduction velocity (NCV) studies indicated "acute and chronic C6 changes."

To determine if appellant's continuing symptoms were related to the accepted injuries, the Office referred him, a statement of accepted facts and the medical record, to Dr. Willard S. Hunter, a Board-certified orthopedic surgeon, for a second opinion examination. In an April 4, 1997 report, he provided a history of injury and treatment, noting that appellant was struck by a

² The claim for carpal tunnel syndrome was accepted under File No. A13-915020.

³ Docket No. 03-2027 (issued December 3, 2003).

⁴ Prior to this federal employment, appellant sustained back and neck injuries in a July 28, 1984 truck accident.

⁵ By February 6, 1996 decision, the Office awarded appellant a schedule award for a six percent impairment of the left lower extremity but denied his claims for schedule awards for the upper extremities and right lower extremity due to cervical and spinal stenosis. Following an oral hearing, by decision dated February 13, 1997, an Office hearing representative set aside the February 6, 1996 decision and remanded the case to the Office for further development on the schedule award issue.

⁶ In an April 14, 1993 report, Dr. Wayne S. Broky, an attending physiatrist, diagnosed chronic left scapulothoracic syndrome, traumatic fibromyalgia and headaches related to the accepted September 18, 1987 injury.

20-pound sack of mail that had fallen no more than a few inches. He performed a clinical examination of the entire spine and all extremities and found no objective evidence of any abnormalities. Dr. Hunter opined that all work-related conditions had ceased without residual. He opined that appellant's symptoms were psychogenic in origin.

By decision dated June 6, 1997, the Office denied appellant's claim for an augmented schedule award, based on Dr. Hunter's opinion that he had no objective clinical findings of any impairments.

By decision dated June 6, 1997 and finalized July 8, 1997, the Office terminated appellant's medical benefits on the grounds that he no longer had any objective work-related residuals, based on Dr. Hunter's report. He requested an oral hearing, held March 4, 1999. By decision dated May 24, 1999, the Office hearing representative reversed the July 8, 1997 decision, finding that Dr. Hunter's opinion did not represent the weight of the medical evidence as it was based on an inaccurate history of injury. The hearing representative also directed further development to determine if the diagnosed somatoform disorder was causally related to the accepted injuries.⁷

The Office referred appellant for second opinion examinations with Dr. Joseph S. Gimbel, a Board-certified orthopedic surgeon, and Dr. Alvin C. Burstein, a Board-certified psychiatrist.

Dr. Gimbel submitted an August 9, 1999 report reviewing the statement of accepted facts and the medical record. He noted appellant's complaints of neck and back pain beginning with a truck accident on July 28, 1984 that predated his federal employment. On examination, Dr. Gimbel observed that appellant sat comfortably and was in no acute distress. Range of motion in the cervical and lumbar spine was full, with discomfort only on lumbar hyperextension. Dr. Gimbel found mild tenderness to palpation of the TMJ bilaterally and at the base of the occiput on the left, extending into the scapula. He found no loss of strength or neurologic abnormalities in any of the extremities. Dr. Gimbel opined that appellant had "no objective findings" other than neck and back pain which by history originated with the July 1984 truck accident. He explained that appellant's current complaints were "not a result of an aggravation of his preexisting condition and there is no objective evidence of any residuals medically connected to his work injury" as supported by the absence of neurologic findings or other objective abnormalities. Dr. Gimel released appellant to continue full-time employment but with no restrictions.

Dr. Burstein submitted a September 3, 1999 report of an August 27, 1999 examination. He provided a history of injury and treatment, reviewed the statement of accepted facts and noted appellant's complaints of chronic neck and back pain. Dr. Burnstein diagnosed an undifferentiated somatoform disorder. He opined that psychological testing performed on August 15, 1999 by Dr. H. Daniel Blackwood, Ph.D., a licensed clinical psychologist, indicated a

⁷ In a July 13, 1999 letter, the Office reopened appellant's claim for payment of medical benefits for treatment of the accepted conditions occipital, cervical, thoracic and lumbar strains, TMJ syndrome and duodenal ulcer.

somatization disorder as there were no objective physical conditions that caused appellant's complaints of severe pain. Dr. Burstein opined that there was "no medical connection" between the diagnosed somatoform disorder and the accepted orthopedic injuries.

Appellant submitted periodic form reports from Dr. Suber dated October 29, 1999 to January 29, 2001 releasing him to full-time limited-duty work. He also submitted October 1999 reports from Dr. Jack Budrow, an attending oral and maxillofacial surgeon, diagnosing continued bilateral TMJ syndrome.

By letter dated May 24, 2001, the Office advised appellant that it proposed to terminate his compensation benefits on the grounds that he no longer had residuals of his work-related conditions. The Office asserted that the weight of the medical evidence rested with the well-rationalized reports of Dr. Gimbel and Dr. Burstein, who opined that all orthopedic residuals of his September 18, 1987 injuries had ceased and that the diagnosed somatoform disorder was not occupationally related.

Appellant responded by June 15, 2001 letter, asserting that he had continuing residuals of the accepted injuries and that Dr. Suber supported a continuing causal relationship. He submitted reports from him dated from June 4, 2001 to July 26, 2002, diagnosing continued neck and left shoulder pain, chronic pain syndrome, possible fibromyositis, lumbar and cervical stenosis, TMJ disease, muscle tension headaches, a history of occipital neuralgia and bilateral carpal tunnel syndrome. Dr. Suber opined that these conditions were directly related to the accepted injuries. He released appellant to limited duty October 10, 2001 and to full duty July 26, 2002.

By decision dated July 29, 2002, the Office terminated medical benefits on the grounds that all residuals of the accepted conditions had ceased. The Office found that the weight of the medical evidence rested with Dr. Gimbel and Dr. Burstein. The Office further found that Dr. Suber provided insufficient medical rationale to support that appellant had any current condition causally related to the accepted injuries.

Appellant disagreed with this decision and, on August 6, 2002 requested a hearing, which was held on February 18, 2003. At the hearing, he asserted that he continued to have residuals of the accepted conditions requiring treatment every two to three months. Appellant noted taking medication for several conditions, including a gastric ulcer and depression.

At the hearing, appellant submitted additional reports from Dr. Suber. In a February 3, 2003 report, he found that appellant continued to exhibit chronic pain syndrome, fibromyositis, cervical and lumbar stenosis, temporomandibular joint disease and muscle tension headaches "relating to [his] work activities." Dr. Suber opined that a permanent impairment requiring ongoing treatment was "substantiated by clinical and electrophysiologic data." In a February 6, 2003 report, he disputed the diagnosis of somatoform disorder, asserting that his opinion as attending physician for 14 years was superior to that of a physician who conducted only a single examination of appellant. Appellant also submitted a May 22, 2000 report by Dr. Luis C. Collo, Jr., an attending Board-certified psychiatrist, noting a history of injury and that he had experienced "worry of losing his job, depression, pain, irritability." He diagnosed depression associated with chronic pain.

By decision dated and finalized June 9, 2003, the Office hearing representative affirmed the July 29, 2002 decision. However, as noted, the copy of the June 9, 2003 decision of record was incomplete and the Board remanded the case to the Office.

By decision dated and finalized December 23, 2003, the Office hearing representative affirmed the July 29, 2002 decision terminating appellant's medical benefits on the grounds that his work-related conditions had ceased. The hearing representative found that the weight of the medical evidence continued to rest with the well-rationalized second opinion reports of Dr. Gimbel and Dr. Burstein. The hearing representative noted that Dr. Gimbel explained that a detailed review of the medical record and objective clinical findings indicated no objective impairment or disability. Dr. Burstein opined that appellant's symptoms were due to an undifferentiated somatoform disorder unrelated to the accepted orthopedic injuries. The hearing representative found that Dr. Suber's February 6, 2003 report was insufficient to outweigh those of Dr. Gimbel and Dr. Burstein as he provided insufficient rationale to establish an ongoing work-related condition.

LEGAL PRECEDENT

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁸ 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.⁹

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹⁰ 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.¹¹ The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹² After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, the claimant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability, which continued after termination of compensation benefits.¹³

⁸ *Bernadine P. Taylor*, 54 ECAB ____ (Docket No. 02-263, issued January 15, 2003).

⁹ *Id.*

¹⁰ *Roger G. Payne*, 55 ECAB ____ (Docket No. 03-1719, issued May 7, 2004); *Furman G. Peake*, 41 ECAB 361 (1990).

¹¹ *Pamela K. Guesford*, 53 ECAB 726 (2002).

¹² *Raymond W. Behrens*, 50 ECAB 221 (1999).

¹³ *Talmadge Miller*, 47 ECAB 673, 679 (1996).

ANALYSIS

The Office accepted that on September 18, 1997, appellant sustained occipital, cervical and thoracic strains, bilateral TMJ syndrome. The Office later accepted a consequential lumbar strain and duodenal ulcer. Appellant submitted periodic reports from 1990 to 1997 from Dr. Suber, an attending Board-certified psychiatrist and neurologist, who diagnosed ongoing chronic pain syndrome, fibromyositis, degenerative joint disease, cervical stenosis and muscle contraction headaches. He opined that all of these conditions were related to the accepted injuries.

The Office initially terminated appellant's entitlement to medical benefits by July 8, 1997 decision. However, the Office reversed the July 8, 1997 decision on May 24, 1999. Therefore, appellant was referred for a second opinion examination by Dr. Gimbel, a Board-certified orthopedic surgeon, and Dr. Burstein, a Board-certified psychiatrist.

Dr. Gimbel submitted an August 9, 1999 report reviewing the statement of accepted facts and the medical record. He conducted a detailed and thorough orthopedic examination and "no objective findings" other than neck and back pain due to a July 1984 truck accident predating appellant's federal employment. Dr. Gimbel emphasized that there was "no objective evidence of any residuals medically connected to his work injury." Dr. Burstein submitted a September 3, 1999 report reviewing the statement of accepted facts and the medical record. He diagnosed undifferentiated somatoform disorder as there were no objective physiologic conditions that could cause appellant's complaints of severe pain. Dr. Burstein opined that there was "no medical connection" between the somatoform disorder and the accepted orthopedic injuries.

Following the submission of Dr. Gimbel's and Dr. Burstein's reports, appellant submitted additional reports from Dr. Suber dated October 29, 1999 to July 26, 2002, recommending limited duty, then releasing him to full duty as of July 26, 2002 and reiterating previous diagnoses. He opined that appellant's continued neck and left shoulder pain, chronic pain syndrome, possible fibromyositis, lumbar and cervical stenosis, TMJ disease, muscle tension headaches and occipital neuralgia were directly related to the accepted injuries. Appellant also submitted October 1999 reports from Dr. Jack Budrow, an attending oral and maxillofacial surgeon, diagnosing continued bilateral TMJ syndrome. However, none of these reports contained sufficient medical rationale explaining how and why the diagnosed conditions continued to be work related or that they required ongoing medical treatment. Dr. Budrow did not fully explain the basis for their conclusions on causal relationship.

The Board finds that the opinions of Dr. Gimbel and Dr. Burstein were sufficient to meet the Office's burden of proof in terminating appellant's authorization for medical benefits effective July 29, 2002, as he submitted insufficient rationalized medical evidence from his attending physicians establishing that he had continuing residuals of the accepted conditions beyond that date.¹⁴

Following the July 29, 2002 termination of his medical benefits, appellant submitted additional reports from Dr. Suber. In a February 3, 2003 report, Dr. Suber diagnosed cervical

¹⁴ *Tammy L. Medley*, 55 ECAB ____ (Docket No. 03-1861, issued December 19, 2003).

and lumbar stenosis, TMJ disease and a variety of pain syndromes. In a February 6, 2003 report, he contended that Dr. Burstein's diagnosis of somatoform pain disorder was unfounded. However, Dr. Suber did not offer sufficient medical rationale explaining how and why these diagnoses were related to the accepted injuries and continued to require medical treatment. In the absence of such rationale, Dr. Suber's opinion is insufficient to outweigh or create a conflict with that of Dr. Gimbel and Dr. Burstein.¹⁵ Also, the Board notes that a diagnosis of "pain" in the absence of objective findings is not a basis for the payment of compensation.¹⁶

Appellant also submitted a May 22, 2000 report by Dr. Luis C. Collo, Jr., an attending Board-certified psychiatrist, diagnosing depression associated with chronic pain. However, as he has not established that he sustained a chronic pain condition related to the accepted injuries, a depressive disorder related to such chronic pain condition cannot be work related.

Thus, the Board finds that the opinions of Dr. Gimbel and Dr. Burstein were sufficient to meet the Office's burden of proof in terminating appellant's authorization for medical benefits effective July 29, 2002 and that he did not submit sufficient medical evidence to outweigh or create a conflict with their opinions.

CONCLUSION

The Board finds that the Office properly terminated appellant's medical benefits effective July 29, 2002 on the grounds that all residuals of his accepted work-related condition had ceased on or before that date.

¹⁵ *Daniel F. O'Donnell, Jr.*, 54 ECAB ____ (Docket No. 02-1468, issued February 28, 2003).

¹⁶ *John L. Clark*, 32 ECAB 1618 (1981).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated and finalized December 23, 2003 is affirmed.

Issued: August 19, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member