



syndrome and myofascitis.<sup>1</sup> Additionally, the Office authorized a November 15, 1983 chemonucleolysis at L4-5. This procedure, however, proved ineffective and on April 13, 1984 appellant underwent a discectomy at L4-5 and a multilevel (L3-S1) lumbar laminectomy, decompression and fusion. The Office paid appellant wage-loss compensation for total disability for approximately 20 years.<sup>2</sup>

On June 12, 2002 the Office terminated appellant's wage-loss compensation for refusing an offer of suitable work. She requested reconsideration and submitted recent medical records from Dr. Booker T. Wright Jr., a Board-certified orthopedic surgeon. In a June 2, 2003 report, Dr. Wright diagnosed lower lumbar spinal injury, spinal fusion at L4-5, neurologic impairment of bowel and bladder due to spinal injury and chronic painful condition involving back and lower extremity, secondary to lumbar radiculopathy and myelopathy. He explained that appellant had neurologic and orthopedic impairment secondary to her June 9, 1983 work-related injury and subsequent treatment. Dr. Wright recommended that she not be returned to work. He cited her incontinence, limited mobility of the spine, appellant's use of medication and her need to frequently assume a recumbent position as factors that would prevent her from successfully completing even a part-time workday on a restricted basis.<sup>3</sup>

By decision dated November 28, 2003, the Office vacated the June 12, 2002 decision terminating compensation. The Office explained that Dr. Wright's opinion supported that appellant was totally disabled from work as a result of her June 9, 1983 employment injury. Accordingly, the Office found appellant entitled to wage-loss compensation.

The employing establishment challenged the Office's November 28, 2003 decision arguing that it was improper to rely on Dr. Wright's 2003 report as a basis for overturning the June 12, 2002 suitable work termination. The employing establishment contended that its February 7, 2002 job offer was consistent with the medical evidence available at the time.

The Office reopened the claim on its own motion and issued a March 11, 2004 decision, which superceded its November 28, 2003 decision. The Office again found that the June 12, 2002 decision should be vacated. Rather than relying on Dr. Wright's recent medical reports as a basis for overturning the prior decision, the Office found that the medical evidence available at the time of the 2002 suitability determination was in equipoise and, therefore, the Office did not properly discharge its burden of proof. The Office further found that Dr. Wright's recent reports

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<sup>1</sup> On September 2, 1983 appellant was involved in a motor vehicle accident, which was unrelated to her employment.

<sup>2</sup> In 1987 appellant moved to India.

<sup>3</sup> In a subsequent report dated June 26, 2003, Dr. Wright reviewed a recent lumbar magnetic resonance imaging (MRI) scan and an electromyography (EMG). The MRI scan confirmed the fusion at L4-S1 and also revealed mild disc bulging, but no lesions sufficiently abnormal to justify repeat surgical intervention. Dr. Wright also noted that the EMG showed evidence of lumbar and sacral nerve root irritation compatible with prior back surgery and appellant's complaints of lower extremity paresthesias and impairment of bladder function. He concluded that appellant had "significant residual impairment from her injury and/or treatment." Dr. Wright reiterated that she was not able to return to gainful employment.

established total disability due to the June 9, 1983 employment injury. Accordingly, the Office found appellant entitled to wage-loss compensation.

On August 5, 2004 the Office issued a notice of proposed termination of wage-loss compensation and medical benefits. The termination was purportedly based on evidence that appellant no longer had any residuals or disability due to her work injury. In a 13-page memorandum the Office reviewed some 20 year's worth of medical evidence and concluded that the record did not contain a rationalized medical opinion regarding appellant's condition beginning September 17, 1983.

On September 10, 2004 the Office issued a final decision terminating wage-loss compensation and medical benefits.

### **LEGAL PRECEDENT**

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>4</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>5</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>6</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>7</sup>

### **ANALYSIS**

In its September 10, 2004 decision, the Office reviewed the record dating back to 1983 and identified what it perceived to be various deficiencies regarding appellant's history of injury and medical treatment. The Office identified discrepancies and omissions in its own statement of accepted facts as well as deficiencies in the medical histories reported by a majority of the physicians who examined or treated appellant over the past two decades. The Office concluded that the medical evidence did not support employment-related disability after September 17, 1983.

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<sup>4</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>5</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>6</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>7</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

The Office's decision does not purport to rescind acceptance of the claim or any of the various medical conditions and procedures that were previously authorized.<sup>8</sup>

Because the Office has previously determined that appellant has a disability causally related to 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>9</sup> In its 13-page memorandum, in support of the proposed termination, the Office did not identify medical evidence that affirmatively establishes that appellant's disability has ceased or is no longer related to the employment. The Office cannot meet its burden by simply questioning the reliability of the medical evidence that supports a finding of ongoing employment-related disability.<sup>10</sup> The Office has effectively shifted its burden to appellant. Accordingly the Board finds that the Office improperly terminated her wage-loss compensation and medical benefits. There is no affirmative medical evidence that her no longer has any residuals or disability due to her work injury. Accordingly, appellant remains entitled to continuing wage-loss compensation and medical benefits.

### CONCLUSION

The Board finds that the Office improperly terminated appellant's wage-loss compensation and medical benefits.

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<sup>8</sup> The September 10, 2004 decision implies that the only legitimately accepted employment-related condition was lumbar strain. To support rescission of acceptance of a claim the Office must show that it based its decision on new evidence, a new legal argument or new rationale. *Stephen N. Elliot*, 53 ECAB 659, 660-61 (2002).

<sup>9</sup> *Jason C. Armstrong*, *supra* note 5.

<sup>10</sup> Dr. Wright's June 2, 2003 report clearly indicates that appellant has ongoing employment-related disability.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 10, 2004 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 3, 2005  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board