



him while in the performance of duty. Appellant stopped work. On September 4, 2003 the Office accepted his claim for contusion of the left foot, lumbar strain/sprain and paid appellant compensation for disability for work.<sup>1</sup>

Appellant sought treatment with Dr. David Dowdy, Board-certified in internal medicine, and Dr. Paul Spiegel, Board-certified in preventive medicine, who submitted periodic reports opining that appellant was unable to work due to lumbar strain, shoulder pain, ankle pain and a foot contusion. On September 23, 2003 Dr. Spiegel requested authorization for a magnetic resonance imaging (MRI) scan and continued physical therapy.

In a January 15, 2004 report, Dr. Spiegel advised that appellant was unable to return to his previous job and that appellant's symptoms exceeded objective findings. He noted that appellant's functional capacity examination revealed "overt disability exaggeration behavior." Dr. Spiegel advised that he did not feel that he could "accurately" assess appellant's work capacity, although it was safe for appellant to do sedentary work. Dr. Spiegel further indicated that he had "no further recommendations for evaluation or treatment of organic problems." Dr. Spiegel indicated that appellant had not responded to treatment and had no objective evidence of any other treatable condition. He could not "anticipate when [appellant's] symptoms would improve." He explained that appellant's exhibition of "overt disability exaggeration behavior" provided at least a partial explanation for his continued symptoms. Dr. Spiegel advised that appellant's recovery had "plateaued" and that his "subjective symptoms exceed his objective findings."

In a March 4, 2004 report, Dr. Spiegel diagnosed lumbar sprain/strain, left ankle pain and depression. He advised that appellant's right shoulder pain was improving. He continued to treat appellant and submit reports.

The Office received a letter on June 7, 2004 from appellant, indicating that he wished to be treated by Dr. David J. Gower, a Board-certified neurological surgeon.

By letter dated June 14, 2004, the Office granted appellant's request to change physicians. The Office also requested that he obtain additional information from his physician regarding his current status.

In a July 1, 2004 report, Dr. Gower noted appellant's history of injury and treatment. He conducted a physical examination and advised that appellant demonstrated "fairly significant evidence of symptom magnification." He explained that in the examination room, appellant walked with a gait taking steps no larger than four the five inches at a time; however, the physician explained that when appellant left the office, he was observed via the security camera, with a gait, that was not quite normal due to stiffness, but "relatively normal." Dr. Gower indicated the distance appellant "was able to travel per stride was considerable greater than he was demonstrating in the office." He noted that appellant had almost no range of motion in his back and very significant hypersensitivity in his skin with light touch. Regarding the extremities, he observed that appellant pointed to an area on his left foot where the boxes fell and stated: "you can see where that has not healed." Dr. Gower stated that it appeared normal. An

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<sup>1</sup> The record reflects that physical therapy and injections were also authorized.

MRI scan of appellant's back was essentially normal. Dr. Gower stated that appellant was exhibiting a "malingering syndrome." He explained that he could not find any objective findings of serious neurological injury and advised that appellant was essentially normal with evidence of symptom magnification. He reiterated that, unless a clearer pathology could be identified to be responsible for the symptoms, appellant was essentially exhibiting a malingering syndrome. Dr. Gower opined that he did not see any reason why appellant could not return to a normal work environment. However, he advised that appellant could not return to the limited-duty position that required him to lift up to 70 pounds until other complaints, such as those related to his cervical spine, were evaluated. He stated that appellant could perform more limited-duty work.

Appellant was placed on the periodic rolls on July 22, 2004.

By letter dated August 12, 2004, the Office requested that Dr. Gower, provide an opinion with respect to appellant's ability to return to work.<sup>2</sup>

On August 16, 2004 Dr. Gower responded, indicating that the accepted conditions of a left foot contusion and lumbar strain had resolved as there was no objective evidence of injury.<sup>3</sup>

On August 26, 2004 the Office issued a notice of proposed termination of compensation on the basis that the weight of the medical evidence, as represented by the reports of Dr. Gower, established that the residuals of the work injury of July 11, 2003 had ceased.

By letter dated September 23, 2004, appellant's attorney submitted additional documentation regarding appellant's current status. In a September 2, 2004 report, Dr. Barry J. McCasland, a Board-certified neurologist, determined that appellant had moderate bilateral carpal tunnel syndrome and mild left L5 radiculopathy. In a September 7, 2004 report, Dr. Robert S. Kaufman, Board-certified in internal medicine, checked the box "yes" regarding whether appellant's condition was caused or aggravated by an employment activity and diagnosed intractable back pain, carpal tunnel syndrome and radiculopathy and opined that he was totally disabled and unable to work.<sup>4</sup>

Also submitted was a September 14, 2004 cervical and lumbar MRI scan report by Dr. Michael H. Smith, a Board-certified diagnostic radiologist, which showed multi-level spondylosis, spinal canal stenosis at C5-6 and C6-7 and neuroforaminal stenosis and multilevel degenerative disc disease with associated bulges.

In a report dated September 21, 2004, Dr. Joseph N. Saba, a Board-certified neurologist, assessed severe injury to the neck, disc and spur complex at C5-6 and C6-7, with no evidence of

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<sup>2</sup> In a memorandum dated August 12, 2004, the Office contacted Dr. Gowers' Office and spoke to an employee in the doctor's office, regarding the physician's request for a cervical MRI scan and advised that appellant had not filed a claim for a cervical condition, only a claim for dropping a package on his left foot and that the claim was only accepted for a lumbar strain and left foot contusion.

<sup>3</sup> He indicated that work restrictions were outlined in his office notes.

<sup>4</sup> The Office also received several older reports, dating back to March 2004, that were not relevant to the issue of whether appellant's disability had ceased.

myelopathy, bilateral carpal tunnel syndrome, likely secondary to hand use on the job, a migraine related to stress, an allergy, a neurogenic bladder, secondary to the injury of July 11, 2003, nicotine dependence, severe soft tissue injury to the low back solely as a result of the July 11, 2003 employment injury, severe left L5 radiculopathy, noncompressive, likely secondary to bruise or outstretched nerve roots. He prescribed restrictions for appellant to work and opined that appellant was at maximum medical improvement.

In a September 29, 2004 report, Dr. Christopher E. Clare, a Board-certified neurosurgeon, noted appellant's history of injury and treatment. He found symptoms indicative of moderate bilateral carpal tunnel syndrome and determined that appellant's biggest concern remained his low back pain, which he suspected was "primarily myofascial in nature." He opined that surgery would not offer a benefit.

By decision dated September 29, 2004, the Office terminated appellant's compensation benefits effective October 2, 2004.

Appellant requested reconsideration on December 21, 2004 and submitted additional evidence, contending that he continued to be disabled. In an October 21, 2004 report, Dr. Saba essentially repeated his previous findings and released appellant from his care. In reports dated November 18, 2004 to January 13, 2005, Dr. Kaufman essentially repeated the findings in his September 7, 2004 report. A January 25, 2005 disability certificate from a provider whose signature is illegible, indicated that appellant was totally disabled beginning July 13, 2003 due to nerve damage to neck and back, right shoulder, carpal tunnel on the left and right wrists.

By decision dated February 16, 2005, the Office denied modification of the September 29, 2004 decision.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>5</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>6</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that appellant sustained injury on July 11, 2003 resulting in a contusion of the left ankle and a lumbar strain. The Office based its decision to terminate appellant's compensation benefits upon the report of Dr. Gower, a Board-certified neurological surgeon and appellant's treating physician. In a July 1, 2004 report, Dr. Gower noted that physical examination revealed no objective findings and "fairly significant evidence of symptom magnification." He explained his findings by noting that appellant's behavior in the examination

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<sup>5</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>6</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

room, was guarded, as opposed to after the examination, when he was observed via a security camera with a “relatively normal” gait and stride. He also noted that the area on his left foot, that appellant alleged had not healed, appeared normal. Dr. Gower indicated that an MRI scan of appellant’s back was essentially normal for his age and again expressed his opinion that appellant was malingering as he could not make any objective findings of any serious neurological injury. He opined that appellant could return to a normal work environment. Although he provided a lifting restriction, he advised that this restriction was based on other conditions that were not accepted by the Office. When the Office requested clarification of his opinion, Dr. Gower stated in an August 16, 2004 report that the accepted conditions of a left foot contusion and lumbar strain had resolved and there was no objective evidence of residual injury. The Board finds that Dr. Gower’s opinion is entitled to probative weight as he is appellant’s treating physician, had an opportunity to conduct a thorough examination, considered appellant’s history and offered reasons for his conclusions.<sup>7</sup>

The record contains a September 7, 2004 report in which Dr. Kaufman, Board-certified in internal medicine, checked the box “yes” regarding whether appellant’s condition was caused or aggravated by an employment activity and diagnosed intractable back pain, carpal tunnel syndrome and radiculopathy. He opined that appellant was totally disabled and unable to work. However, these conditions were not accepted by the Office as related to the July 11, 2003 injury.<sup>8</sup> Although he noted intractable back pain, pain is a symptom, not a diagnosis and does not constitute a basis for payment of compensation in the absence of objective findings of disability.<sup>9</sup> The Board has held that a physician’s opinion which consists of checking of a box “yes” in a form report, without additional explanation or rationale, is of diminished probative value on the issue of causal relationship.<sup>10</sup>

In a report dated September 21, 2004, Dr. Saba diagnosed several conditions not accepted by the Office and opined that they were due to the July 11, 2003 employment injury. However, his report does not contain sufficient medical reasoning to establish how these conditions were caused or aggravated by the employment injury nor did he provide medical reasoning to support his conclusory opinion on causal relationship. The Board has held that a medical opinion not fortified by medical rationale is of diminished probative value.<sup>11</sup>

Other medical reports submitted by appellant did not specifically support that the accepted employment injury, contusion of the left foot and a lumbar strain/sprain, remained symptomatic or disabling.

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<sup>7</sup> See *Anna M. Delaney*, 53 ECAB 384, 386 (2002) regarding the factors to be considered in assessing medical evidence.

<sup>8</sup> For conditions not accepted or approved by the Office as being due to an employment injury, appellant bears the burden of proof to establish that the condition is causally related to the employment injury. See *Jaja K. Asaramo*, 55 ECAB \_\_\_\_ (Docket No. 03-1327, issued January 5, 2004).

<sup>9</sup> See *John L. Clark*, 32 ECAB 1618 (1981); *Huie Lee Goad*, 1 ECAB 180 (1948).

<sup>10</sup> *Calvin E. King*, 51 ECAB 394 (2000); *Linda Thompson*, 51 ECAB 694 (2000).

<sup>11</sup> *Annie L. Billingsley*, 50 ECAB 210 (1998); *Michael E. Smith*, 50 ECAB 313 (1999).

The Board finds that Dr. Gower's opinion that appellant's employment-related conditions had resolved constitutes the weight of the medical evidence. Accordingly, the Office met its burden of proof to justify termination of benefits.

### **LEGAL PRECEDENT -- ISSUE 2**

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.<sup>12</sup>

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

After the Office's September 29, 2004 decision, appellant submitted an October 21, 2004 report, from Dr. Saba, who essentially repeated his findings and released appellant from his care. He did not provide any opinion regarding whether appellant had any disability after October 2, 2004 causally related to his accepted employment injuries.

Appellant also provided several reports from Dr. Kaufman who essentially repeated the findings in his September 7, 2004 report. He provided a diagnosis of intractable back pain and radiculopathy and checked the box "yes," that he believed the condition found was caused or aggravated by employment. He opined that appellant was totally disabled from July 11, 2003 and unable to work. However, as noted, checking of the box "yes" without further rationale is insufficient to establish causal relationship.<sup>14</sup>

The January 25, 2005 disability certificate from a provider whose signature is illegible lacks proper identification to show that it was from a physician and does not constitute competent medical evidence.<sup>15</sup> Other medical reports submitted by appellant did not specifically address the cause of his condition. Consequently, appellant has not established that his condition on and after October 2, 2004 was causally related to his accepted employment injuries.

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<sup>12</sup> *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

<sup>13</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>14</sup> *See supra* note 10.

<sup>15</sup> *See Merton J. Sills*, 39 ECAB 572 (1988).

**CONCLUSION**

The Board finds that the Office met its burden of proof in terminating appellant's benefits effective October 2, 2004 and that appellant did not meet his burden of proof to establish that he had any injury-related condition or disability after October 2, 2004 causally related to the July 11, 2003 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 16, 2005 and September 29, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 8, 2005  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board