

diagnosed a thoracic strain caused by the December 10, 2002 work incident. The Office accepted her claim for a thoracic spine strain.

In reports dated January 24 to March 10, 2003, Dr. Karl L. Singer, an attending Board-certified orthopedic surgeon, diagnosed cervical, thoracic and lumbar strains and indicated that appellant was totally disabled through April 5, 2003. In reports dated April 2 through June 10, 2003, he diagnosed impingement tendinosis of the supraspinatus tendons of both shoulders, a left shoulder strain and myofascial back strain, cervical, dorsal and lumbar. Dr. Singer indicated that appellant could return to light duty for four hours a day on April 9, 2003.

In a June 7, 2003 report, Dr. Patrick N. Bays, an orthopedic surgeon, an osteopath certified by the Washington State Board of Osteopathic Medicine and Surgery and an Office referral physician, provided a history of appellant's condition, course of treatment and detailed findings on physical examination. He stated:

“The diagnosed condition that was related to the work injury and was well documented in the medical records was a thoracic ... strain. Since that time additional ... diagnoses of cervical and lumbar strain/sprain have been rendered. [Appellant] has also been diagnosed with an impingement syndrome to the left shoulder.... However, it does not appear that [these] conditions are in any way related to the original diagnosed medical condition and the original site of injury which was well documented on pain diagram by [appellant] herself in the thoracic spine. All of these other conditions are unrelated to the work injury of December 10, 2002.”

* * *

“I do not believe that the December 10, 2002 accident resulted in any material aggravation of a preexisting medical condition.”

* * *

“I believe that the injuries related to the December 10, 2002 accident have resolved in their entirety.”

* * *

“[Appellant] has a myriad of complaints at this time which go far and beyond the original complaint of mid thoracic and right parascapular pain. Her subjective complaints are out of proportion to objective findings. [Appellant] does exhibit symptom magnification and I am unable to identify or support any objective reason that would support continued treatment of the work injury.”

Dr. Bays opined that appellant's accepted employment injury had resolved.

On June 12, 2003 the Office asked Dr. Singer to review Dr. Bays' report and indicate whether he agreed with the findings. He did not respond to this request.

In a disability certificate dated June 25, 2003, Dr. Singer indicated that appellant was totally disabled for two weeks. In a July 11, 2003 report, he diagnosed a shoulder strain and myofascial strain and indicated that she could return to limited duty on July 14, 2003. In a July 11, 2003 report, Dr. Singer diagnosed right and left shoulder strains and chronic myofascial pain syndrome. He indicated that appellant's shoulder pain was caused by a June 25, 2003 incident when she was leaning forward to put a key card into a slot. In a July 18, 2003 work capacity evaluation, he indicated that she could perform light-duty work for four hours a day. Dr. Singer provided a list of physical restrictions.

Appellant filed a claim for compensation for total disability for the period June 28 to August 22, 2003.

In a report dated August 29, 2003, Dr. Singer indicated that appellant could work for four hours a day with restrictions and should gradually transition to working six hours a day and then eight hours. He indicated that her thoracic strain was caused by the work activities of pushing, reaching, bending, lifting and pulling overhead. She was disabled from June 28 to July 11, 2003 due to back spasms. In notes dated August 29, 2003, Dr. Singer diagnosed subacromial impingement tendinitis of both shoulders and recommended only six hours of work a day. A work capacity evaluation form completed on August 29, 2003 indicates erroneously that a shoulder strain is an accepted condition. In a September 3, 2003 work capacity evaluation, Dr. Singer indicated that appellant could work for four hours a day with restrictions.

On September 5, 2003 the Office proposed termination of appellant's compensation and medical benefits on the grounds that her December 10, 2002 thoracic strain had resolved. By decisions dated September 5 and October 3, 2003, the Office denied her claim for compensation for the period June 28 to July 25, 2003 and July 26 to August 22, 2003.

By decision dated October 6, 2003, the Office finalized its decision to terminate appellant's compensation and medical benefits effective that date.

Appellant requested an oral hearing that was held May 19, 2004.

In a November 26, 2003 report, Dr. Singer diagnosed a thoracic strain and myofascial syndrome. He indicated that appellant was not working because she was unable to perform light duty. In a February 27, 2004 report, he diagnosed a cervical strain and impingement tendinitis of the right shoulder. Dr. Singer noted that appellant had been able to return to work in a light-duty capacity on April 8, 2003 for four hours a day. In reports dated September 1 and October 11, 2004, he diagnosed a cervical, dorsal strain, chronic, recurrent, degenerative disc disease, aggravation of a preexisting thoracic vertebral fracture and chronic subacromial impingement tendinitis. Dr. Singer indicated that appellant was capable of working eight hours a day with restrictions. He noted that a magnetic resonance imaging (MRI) scan of the thoracic spine revealed mild to moderate thoracic disc changes and an old compression fracture at T6.

By decision dated July 19, 2004, the Office hearing representative affirmed the September 5 and October 3 and 6, 2003 decisions.

Appellant requested reconsideration. By decision dated October 14, 2004, the Office affirmed the July 19, 2004 decision.

Appellant requested reconsideration and submitted additional evidence.

In a December 6, 2004 report, Dr. David A. Judish, a Board-certified physiatrist, provided a history of appellant's condition and findings on physical examination and diagnosed chronic bilateral cervical, thoracic and shoulder pain, a preexisting thoracic compression fracture at T6, a C3-4 extruded disc, bilateral subacromial bursitis and rotator cuff tendinitis. He stated:

“In regards to the status of [appellant's] [compensation] claim, it is my opinion that this claim was closed without optimal treatment. The second opinion examination by Dr. Bays on June 7, 2003 did not have access to all of the appropriate objective findings, including the MRI scan of the cervical spine and the most recent shoulder MRI scans, as well as the thoracic MRI scan. In addition, [appellant] has never had an appropriate trial of a work conditioning program for a job which requires substantial repetitive physical requirements.”

By decision dated November 17, 2005, the Office affirmed the October 14, 2004 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office 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 -- ISSUE 1

The Office accepted appellant's claim for a thoracic strain sustained on December 10, 2002. Effective October 6, 2003, the Office finalized its termination of her

¹ *Barry Neutach*, 54 ECAB 313 (2003); *Lawrence D. Price*, 47 ECAB 120 (1995).

² *Id.*

³ *See Del K. Rykert*, 40 ECAB 284 (1988).

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

compensation and medical benefits on the grounds that the accepted condition had resolved. The Office, therefore, bears the burden of proof to justify a termination of benefits.⁵

In a June 7, 2003 report, Dr. Bays provided a history of appellant's thoracic strain, course of treatment and detailed findings on physical examination. He stated that other diagnoses such as cervical and lumbar strains and impingement syndrome of the left shoulder were not related to the December 10, 2002 thoracic strain. Dr. Bays stated that appellant's subjective complaints were out of proportion to the objective findings and she exhibited symptom magnification. He could find no objective reason that would support continued treatment of the work injury. Dr. Bays opined that appellant's accepted employment injury, a thoracic strain, had resolved. The Board finds that the thorough and well-rationalized report of Dr. Bays established that appellant's accepted thoracic strain had resolved and her continuing medical problems were due to nonwork-related conditions.

In reports dated January 24 to March 10, 2003, Dr. Singer diagnosed cervical, thoracic and lumbar strains and indicated that appellant was totally disabled through April 5, 2003. In reports dated April 2 through 17, 2003, he indicated that she could return to light duty for four hours a day on April 9, 2003. In a disability certificate dated June 25, 2003, Dr. Singer indicated that appellant was totally disabled for two weeks. On July 11, 2003 he diagnosed right and left shoulder strains and myofascial strain and indicated that appellant could return to limited duty on July 14, 2003. In a July 18, 2003 work capacity evaluation, Dr. Singer indicated that she could perform light-duty work for four hours a day. On August 29, 2003 he indicated that appellant could work for four hours a day with restrictions and should gradually transition to working six hours a day and then eight hours. In notes dated August 29, 2003, Dr. Singer diagnosed subacromial impingement tendinitis of both shoulders and recommended six hours of work a day. In a September 3, 2003 work capacity evaluation, he indicated that appellant could work for four hours a day with restrictions.

In his reports, Dr. Singer included medical conditions that were not accepted by the Office as causally related to the December 10, 2002 employment incident and he provided insufficient medical rationale explaining how these conditions were due to the accepted thoracic strain. He was asked to review Dr. Bays' report and explain any disagreement with the report but Dr. Singer did not respond to the request. Dr. Singer's reports also contain discrepancies. His August 29, 2003 report indicates that appellant was placed on bedrest due to back spasms during the period June 28 to July 11, 2003. However, this conflicts with his July 11, 2003 report in which he indicated that she was disabled due to a June 25, 2003 accident involving use of a key card which affected her shoulders. Dr. Singer also indicated that appellant's thoracic strain was due to pushing, reaching, bending, lifting and pulling overhead, but the December 10, 2002 employment injury was caused by an incident involving a mail hamper. Additionally, the work capacity evaluation dated August 29, 2003 had been modified by someone to erroneously reflect that a shoulder strain was an accepted condition whereas only a thoracic strain was an accepted condition.

⁵ *Willa M. Frazier*, 55 ECAB ____ (Docket No. 04-120, issued March 11, 2004).

The Board finds that the weight of the medical evidence, represented by the report of Dr. Bays establishes that appellant's employment-related thoracic strain had resolved and the Office met its burden of proof in terminating her compensation and medical benefits on October 6, 2003.

LEGAL PRECEDENT -- ISSUE 2

Where the Office meets its burden of proof in justifying termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the employment injury.⁶ To establish a causal relationship between appellant's thoracic and lumbar strains and his ongoing back problems after October 1, 2003, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.⁷ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸

Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's 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.⁹ Neither the mere fact that the disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

ANALYSIS -- ISSUE 2

The Board finds that, following the proper termination of her compensation and medical benefits on October 6, 2002, appellant failed to establish that she had any continuing disability or medical condition causally related to her employment-related thoracic strain.

In a November 26, 2003 report, Dr. Singer diagnosed a thoracic strain and myofascial syndrome. He indicated that appellant was not working because she was unable to perform light duty. On February 27, 2004 Dr. Singer diagnosed a cervical strain and impingement tendinitis of the right shoulder. He noted that appellant had been able to return to work in a light-duty

⁶ See *Darlene R. Kennedy*, 57 ECAB ____ (Docket No. 05-1284, issued February 10, 2006); *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation benefits warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wages).

⁷ *Michael S. Mina*, 57 ECAB ____ (Docket No. 05-1763, issued February 7, 2006).

⁸ *Id.*

⁹ *Gary J. Watling*, 52 ECAB 278 (2001); *Gloria J. McPherson*, 51 ECAB 441 (2000).

¹⁰ *Michael S. Mina*, *supra* note 7.

capacity on April 8, 2003 for four hours a day. In reports dated September 1 and October 11, 2004, Dr. Singer diagnosed a cervical, dorsal strain, chronic, recurrent, degenerative disc disease, aggravation of a preexisting thoracic vertebral fracture and chronic subacromial impingement tendinitis. He indicated that appellant was capable of working eight hours a day with restrictions. Dr. Singer noted that an MRI scan of the thoracic spine revealed mild to moderate thoracic disc changes and an old compression fracture at T6. However, he did not provide objective evidence of an on-going work-related thoracic strain. Dr. Singer diagnosed numerous other medical conditions involving multiple areas of the back and shoulders, but he provided insufficient medical rationale to explain how these conditions were causally related to the December 10, 2002 employment injury. The Board finds that his reports are insufficient to overcome or create a conflict with the opinion of Dr. Bays.

In a December 6, 2004 report, Dr. Judish diagnosed chronic bilateral cervical, thoracic and shoulder pain, a preexisting thoracic compression fracture at T6, an C3-4 extruded disc, bilateral subacromial bursitis and rotator cuff tendinitis. He stated:

“In regards to the status of [appellant’s] [compensation] claim, it is my opinion that this claim was closed without optimal treatment. The second opinion examination by Dr. Bays on June 7, 2003 did not have access to all of the appropriate objective findings, including the MRI scan of the cervical spine and the most recent shoulder MRI scans, as well as the thoracic MRI scan. In addition, [appellant] has never had an appropriate trial of a work conditioning program for a job which requires substantial repetitive physical requirements.”

However, Dr. Judish did not provide objective findings to support an on-going work-related thoracic strain. He provided insufficient medical rationale explaining how appellant’s disability due to her accepted December 10, 2002 thoracic strain continued after October 6, 2003 or how the other diagnosed conditions were causally related to the employment injury.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant’s compensation and medical benefits effective October 6, 2003. The Board further finds that appellant failed to meet her burden of proof to establish that she had any employment-related disability or medical condition after October 6, 2003 causally related to her December 10, 2002 work-related thoracic strain.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 17, 2005 is affirmed.

Issued: August 4, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board