



impairment of the use of the right hand but was not totally disabled. He indicated that appellant could work in a light-duty job.

Appellant returned to work as a mail processing clerk on October 17, 2002 and continued to work until February 17, 2004, when she filed a recurrence of disability claim. The attending osteopath, Dr. Scott Fried, opined in a February 17, 2004 report that appellant was unable to work. He diagnosed repetitive strain injury right arm with acute strain right elbow on October 3, 2000, radial and median neuropathy of the right arm and moderate ulnar neuritis right elbow.

On May 18, 2004 the Office found that a conflict in the medical evidence existed between Dr. Lee and Dr. Fried. Appellant was referred to Dr. Menachem Meller, a Board-certified orthopedic surgeon. In a report dated June 25, 2004, Dr. Meller reviewed medical evidence and provided a history and results on examination. He indicated that the examination was completely normal with no objective clinical findings. Dr. Meller opined that appellant could return to her preinjury occupation without medical restrictions and no further treatment was indicated.

By letter dated July 22, 2004, the Office notified appellant that it proposed to terminate her compensation for wage-loss and medical benefits as the weight of the evidence established that her employment-related condition had resolved. Appellant submitted an August 5, 2004 report from Dr. Fried, who reiterated his previous diagnoses and found appellant disabled.

The Office terminated compensation for wage-loss and medical benefits in a decision dated September 3, 2004. The weight of the evidence was found to be represented by Dr. Meller.

Appellant requested a hearing before an Office hearing representative, which was held on June 9, 2005. She continued to submit reports of continuing treatment reports from Dr. Fried who diagnosed repetitive strain injury with flexor tenosynovitis with acute right elbow strain on October 3, 2000, radial and median neuropathy of the right arm, moderate ulnar neuritis right elbow and acute exacerbation repetitive strain injury in September 2004. Dr. Fried indicated in a September 22, 2004 report that appellant's light-duty job requirements had exacerbated her right arm symptoms.

In a decision dated December 5, 2005, the hearing representative affirmed the September 3, 2004 termination decision.

### **LEGAL PRECEDENT**

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup> The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.<sup>2</sup> The right to medical benefits is not limited to the period of entitlement to disability. To terminate

---

<sup>1</sup> *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

<sup>2</sup> *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.<sup>3</sup>

### ANALYSIS

In this case, the Office found a conflict in the medical evidence between Dr. Fried, the attending osteopath and Dr. Lee.<sup>4</sup> With respect to the issue presented, however, there was no conflict in the evidence. Dr. Lee's report was dated March 7, 2002 and he reported that appellant was partially disabled at that time. After his report, appellant returned to work from October 2002 until February 2004 in a full-time position as a mail processing clerk. The March 7, 2002 report of Dr. Lee is of little probative value to the issue of whether appellant continued to have an employment-related disability in 2004. The Board finds that the referral to Dr. Meller was not as a referee examiner, but as a second opinion physician. Even though the report of Dr. Meller is not entitled to the special weight afforded to the opinion of a referee examiner resolving a conflict of medical opinion, his report can still be considered for its own intrinsic value and can still constitute the weight of the medical evidence.<sup>5</sup>

Dr. Meller provided a complete report with an accurate factual and medical background. He reviewed medical evidence and provided his findings on examination. Dr. Meller reported a completely normal examination and, based on his examination, he indicated that appellant did not have any continuing disability or condition that warranted further treatment. He provided a reasoned medical opinion indicating that appellant did not have a continuing employment-related condition.

The treating physician, Dr. Fried, provided reports showing continuing treatment for right arm complaints. The Board notes that the accepted condition in this case was a right elbow strain. Dr. Fried's reports provided a diagnosis of acute right elbow strain in October 2000, although it was included in the diagnosis of repetitive strain injury. He did not discuss whether he believed appellant continued to have residuals of the accepted condition. Dr. Fried provided other diagnoses, such as the repetitive strain injury, nerve neuropathy and ulnar neuritis of the right elbow, without providing an opinion on causal relationship with the employment injury. It is appellant's burden of proof to establish any additional conditions as employment related<sup>6</sup> and Dr. Fried did not provide a reasoned medical opinion on this issue.

The Board accordingly finds that the weight of the medical evidence was represented by Dr. Meller who provided a reasoned medical opinion, while Dr. Fried did not address the relevant issues. The Office therefore met its burden of proof in terminating compensation for the accepted right elbow strain as of September 3, 2004.

---

<sup>3</sup> *Frederick Justiniano*, 45 ECAB 491 (1994).

<sup>4</sup> *See* 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321.

<sup>5</sup> *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

<sup>6</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability which continued after termination of compensation benefits.<sup>7</sup> Appellant continued to submit reports from Dr. Fried regarding right arm complaints. The diagnoses remained the same, although as of September 22, 2004 Dr. Fried referred to an acute exacerbation which he appeared to relate to her light-duty job duties. To the extent that appellant is claiming that her light-duty job aggravated her condition, this would be a claim for a new injury.<sup>8</sup> Dr. Fried did not provide a reasoned opinion establishing a continuing condition or disability causally related to the employment injury after September 3, 2004.

### **CONCLUSION**

The report of Dr. Meller represented the weight of the medical evidence and the Office met its burden of proof to terminate compensation for wage-loss and medical benefits as of September 3, 2004.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 5, 2005 is affirmed, as modified.

Issued: December 21, 2006  
Washington, DC

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

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>7</sup> *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

<sup>8</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997).