

**United States Department of Labor
Employees' Compensation Appeals Board**

N.B., Appellant)

and)

DEPARTMENT OF THE NAVY, NAVAL AIR)
WARFARE CENTER, Lakehurst, NJ, Employer)

**Docket No. 07-759
Issued: July 9, 2007**

Appearances:

Thomas R. Uliase, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 24, 2007 appellant, through counsel, filed a timely appeal from an August 1, 2006 decision of the Office of Workers' Compensation Programs' hearing representative affirming the termination of her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether the Office met its burden of proof in terminating appellant's compensation and medical benefits effective January 5, 2006.

FACTUAL HISTORY

On December 1, 2004 appellant, then a 41-year-old athletics recreation specialist, filed an occupational disease claim alleging that on November 29, 2004 she first realized her back injury was employment related. The Office accepted the claim for aggravated cervical radiculitis. Appellant stopped work on November 29, 2004 and returned to working six hours per day on

March 1, 2005, which was reduced to four hours per day on March 3, 2005. The Office paid appellant for her wage loss for the period January 5 to August 6, 2005

On July 15, 2005 the Office referred appellant for a second opinion evaluation with Dr. Gregory S. Maslow, a Board-certified orthopedic surgeon. On August 12, 2005 Dr. Maslow opined that appellant's accepted aggravation of cervical radiculitis had resolved as there was no "objective evidence of neurologic deficit on clinical examination." He also found no objective evidence supporting a permanent aggravation or that she continued to have any disability from the accepted condition. A physical examination showed no tenderness in the cervical spine or suboccipital region. Dr. Maslow reported that appellant "moves easily through the examination" and "sits, stands and walks comfortably." Cervical range of motion was full with negative overhead exercise testing for thoracic outlet impingement signs, negative for vortex compression testing for radicular signs and negative Adsons maneuver. Dr. Maslow noted that appellant did have "right side tenderness in the superior trapezius," but there was no droop, spasm or atrophy. A sensory examination of the upper extremities was normal. In an accompanying work restriction OWCP-5c form, Dr. Maslow stated that appellant was capable of performing her usual job with no restriction.

In a September 30, 2005 report, Dr. Rafael J. Hasbun, a treating internist, noted that appellant first injured her back at work on October 25, 1996 and sustained a second back injury on November 29, 2004. He indicated that he had referred appellant for chiropractic treatment and physical therapy. In concluding, Dr. Hasbun opined that appellant continued "to be both physically and mentally/emotionally unable to return to work" and was unable to perform her usual employment duties.

On November 22, 2005 the Office issued a notice of proposed termination of compensation and medical benefits finding that Dr. Maslow's August 12, 2005 report established no residuals of the work-related employment injury of aggravated cervical radiculitis. The Office allotted appellant 30 days within which to submit any opposing evidence. Appellant submitted medical evidence previously of record and a September 30, 2005 work capacity evaluation (OWCP-5c form) completed by Dr. Hasbun, who stated that appellant was unable to perform her usual employment duties for three to six months and provided physical restrictions.

By decision dated January 5, 2006, the Office terminated appellant's compensation and medical benefits effective that date on the grounds that the weight of the medical evidence rested with the Office referral physician, Dr. Maslow, who determined that she had no continuing disability or residuals resulting from her accepted aggravated cervical radiculitis condition.

On February 10, 2006 appellant's counsel requested an oral hearing before an Office hearing representative. A hearing was held on May 10, 2006 at which appellant was represented by counsel and testified.

By decision dated August 1, 2006, the Office hearing representative affirmed the termination of benefits.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.¹ After it has determined that an employee has disability causally related to her federal employment, the Office may not terminate compensation without establishing that the disability has 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

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 appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁴

ANALYSIS

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits for her aggravated cervical radiculitis condition on January 6, 2005. On August 12, 2005 Dr. Maslow provided a second opinion evaluation for the Office. He reviewed the record, including the history of injury and her limited-duty job description. Examination of the cervical spine demonstrated full range of motion, good muscle strength, no neurologic deficit and no tenderness. Dr. Maslow also found no tenderness in the suboccipital region and normal sensory examination of the upper extremities. He also pointed out that there was no objective evidence supporting a permanent aggravation or continued employment-related disability. Dr. Maslow advised that appellant had no residuals of the aggravated cervical radiculitis and could work eight hours a day with no restrictions.

The remaining evidence submitted prior to the Office's termination of compensation is insufficient to establish that appellant had any further disability due to her November 29, 2004 employment injury. In a report dated September 30, 2005, Dr. Hasbun noted that appellant first injured her back at work on October 25, 1996 and sustained a second back injury on November 29, 2004. He concluded that appellant continued "to be both physically and mentally/emotionally unable to return to work" and was unable to perform her usual employment duties. In order to be of probative value, however, the opinion of a physician must be based on a complete and accurate factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the relationship between the diagnosed condition and appellant's employment.⁵ In his September 30, 2005 report,

¹ *K.H.*, 58 ECAB ___ (Docket No. 06-832, issued November 30, 2006); *Paul L. Stewart*, 54 ECAB 824 (2003).

² *Elsie L. Price*, 54 ECAB 734 (2003).

³ *See Jaja K. Asaramo*, 55 ECAB 200 (2004); *Del K. Rykert*, 40 ECAB 284 (1988).

⁴ *Kathryn E. Demarsh*, 56 ECAB ___ (Docket No. 05-269, issued August 18, 2005); *James F. Weikel*, 54 ECAB 660 (2003).

⁵ *John F. Glynn*, 53 ECAB 562 (2002); *Allen C. Hundley*, 53 ECAB 551 (2002).

Dr. Hasbun did not list any findings on physical examination, provide a diagnosis or provide any explanation as to how/why appellant's inability to work was employment related. Thus, his opinion is of diminished probative value on the issue of whether appellant remains disabled due to her accepted employment injury of aggravated cervical radiculitis.⁶ For these reasons, Dr. Hasbun's opinion is insufficient to outweigh or create a conflict with that of Dr. Maslow.⁷

The medical evidence, as represented by the well-rationalized opinion of Dr. Maslow, supports that appellant's aggravated cervical radiculitis condition had resolved and she no longer has any disability or residuals due to the accepted condition.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation and medical benefits effective January 5, 2005.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 1, 2006 is affirmed.

Issued: July 9, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

⁶ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁷ *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).