

March 14, 2001 the Office accepted the claim for lumbar strain, cervical strain and concussion. Appellant stopped work on January 10, 2001, returned to limited-duty part-time work on June 25, 2001, increasing to full duty on September 28, 2001. He stopped work again on December 13, 2001 and did not return. The Office paid compensation for total disability.

On March 21, 2001 Dr. Vanesa S. Godin, a neurologist, noted the history of injury and advised that appellant reported five to six losses of consciousness events since the injury. She noted findings on examination and opined that appellant had a closed head injury, post-traumatic vestibulopathy and post-traumatic headaches. Dr. Godin stated that the loss of attention, concentration and memory suggested a postconcussion syndrome and the loss of awareness could be a seizure or epileptic event. She ordered a sleep deprived electroencephalogram (EEG) and a magnetic resonance imaging (MRI) scan of the brain, which were reported as normal. Dr. Godin noted that appellant continued to have low back pain and advised that opioid medication caused rebound headaches. In a May 1, 2001 report, she opined that another EEG was needed to rule out partial simple seizures. Appellant began treatment with Dr. Steven A. Holper, a Board-certified physiatrist, who opined that he was totally disabled due to the work injury.

The Office referred appellant for a second opinion examination with Dr. John Creed Lovell, a neurologist. In a December 5, 2002 report, Dr. Lovell diagnosed low back pain, recurrent episodes of loss of consciousness, clonic activity and tongue biting, and post-concussion syndrome with headaches. He opined that the conditions appeared to be related to the January 9, 2001 head injury. Dr. Lovell noted that an elevated liver function test and abnormal liver biopsy were not work related. He opined that appellant was totally disabled and recommended consultation with an epilepsy center.

On May 13, 2003 appellant saw Dr. Linda M. Brown, a neurologist, for recurrent episodes of loss of consciousness. Dr. Brown noted the history of injury, presented findings and recommended that appellant be studied further with video EEG monitoring.

On April 2, 2004 Dr. Ronald Kirby Reed, a Board-certified neurologist, reviewed the history of injury and appellant's loss of consciousness episodes. He advised that appellant's symptoms were fully compatible with a seizure disorder that was theoretically post-traumatic in origin. The fact that both the EEG and MRI brain scans were normal did not confirm or rule out the diagnosis as true epilepsy could only be diagnosed or excluded by trapping an event on an EEG. Dr. Reed noted that appellant had never been aggressively treated for epilepsy. He opined that appellant's post-traumatic cephalgia and post-traumatic epilepsy were related to the work injury.

In a June 7, 2004 report, Dr. Mehdi Ansarinia, a Board-certified neurologist, noted the history of injury. He diagnosed post-traumatic syndrome with the constellation of symptoms including persistent daily headaches, ataxia, depression and sleep changes; migraine headaches with aura; analgesic rebound headaches; episodic loss of consciousness, possible post-traumatic epilepsy daily opioid use; left occipital neuralgia, possible temporomandibular joint disorder and sensory loss in the left upper extremity.

The Office referred appellant for a second opinion evaluation by Dr. Bruce M. Ballard, a Board-certified orthopedic surgeon and Dr. Robert A. Moore, a Board-certified neurologist. In a January 25, 2005 report, Dr. Ballard noted the history of injury and appellant's subsequent seizure symptoms. He set forth his observations, noting that there were no objective findings that did not require appellant's cooperation. Dr. Ballard advised there were no objective findings to substantiate appellant's multiple and widespread orthopedic complaints. He explained that appellant fell and sustained lumbar and cervical soft tissue injuries that should have resolved within six weeks without treatment or, at the outside, with four to five weeks of physical therapy. Dr. Ballard advised that there were no residuals of the accepted lumbar and cervical strains and no further medical treatment were warranted. From an orthopedic standpoint, appellant could return to work without restrictions. Dr. Ballard noted that appellant had a great deal of anxiety and was depressed which could be factors contributing to his current condition.

In a July 18, 2005 report, Dr. Moore reviewed the statement of accepted facts and the medical record. He stated that appellant fell on January 2001 and, while it was unclear whether he hit his head or lost consciousness, he began having episodic loss of consciousness three days later. Dr. Moore noted that inpatient EEG monitoring had been recommended, appellant was being treated with anticonvulsants for a seizure disorder, and that he took chronic opiates. He diagnosed episodic loss of consciousness of undetermined etiology. Dr. Moore could not diagnose epilepsy. There were clinical characteristics of appellant's episodes that appeared to be epileptiform, but it was unclear whether he struck his head at the time of his injury. Even if he had struck his head, it would be very unusual to develop a post-traumatic seizure disorder as medical records indicated no loss of consciousness and the MRI scan of the brain was normal. Dr. Moore noted that appellant was involved in a motor vehicle accident in 1999, that required suturing, but he could not determine the severity of that injury. He opined that possible etiologies of appellant's episodic loss of consciousness included epileptiform disorder or pseudoseizures from side effects associated with the use of medications. Dr. Moore stated that the concussion diagnosis was not currently established by objective findings. The diagnoses of epilepsy and seizures were based on appellant's history and not on abnormal or objective findings. He agreed with prior examiners that the only way to determine whether appellant had seizures was to perform inpatient EEG monitoring, during which time anticonvulsant medications would be discontinued. Appellant might also require detoxification for the side effects of chronic opiate use. Dr. Moore noted that any neurological aggravation was not indicated as the subjective symptomatology of headaches, episodic loss of consciousness and impaired memory arose after the work injury. He found no preexisting neurological disability. To the extent there was a possible seizure diagnosis, it could be due to appellant's 1999 nonwork-related motor vehicle accident or to side effects of his medications. Dr. Moore opined that appellant exhibited disability based solely on his subjective complaints of loss of consciousness, but he could work with restrictions on climbing, balancing, working at heights, working around moving machinery or operating a motor vehicle.

In a November 11, 2005 report, Dr. Holper found that appellant reached maximum medical improvement from his work-related cervical and lumbar injuries on November 11, 2005. He opined that appellant had 13 percent whole person impairment.

The Office sought to arrange a three-day inpatient video EEG monitor, but appellant was not willing to undergo the study. Appellant noted that he was retiring on medical disability and

would change to Office of Personnel Management (OPM) benefits on January 1, 2006. Dr. Holper reiterated that appellant was totally disabled due to chronic low back pain syndrome resulting from the January 9, 2001 work injury.

On January 18, 2006 the Office requested that Dr. Moore provide a supplemental opinion as to whether there were any objective findings to establish a diagnosis of epilepsy or seizures absent a three-day inpatient video EEG monitoring. In a January 30, 2006 report, Dr. Moore opined that appellant's seizure diagnosis was based on his self-reports. He noted that it was not uncommon in the case of a seizure disorder for a diagnosis to be based on unwitnessed events.

On May 4, 2006 the Office proposed to terminate appellant's compensation. It found that the weight of the medical evidence was represented by the opinions of Dr. Ballard and Dr. Moore, which established that appellant's lumbar strain, cervical strain and concussion had resolved. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination. No additional evidence was submitted.

By decision dated June 6, 2006, the Office terminated appellant's compensation benefits effective that date.

On May 14, 2007 appellant requested reconsideration contending that recommended testing was never performed. He stated that he did not receive timely notice of the three-day inpatient EEG monitoring test. Appellant argued that the reports from Drs. Moore and Ballard were biased and inconsistent with what each physician said during examination. In a June 2, 2006 statement, Althea Gilkey, Esquire, appellant's former attorney, argued that he had residuals of his work injuries and that further testing should have been performed prior to terminating benefits. She argued that an August 8, 2001 lumbar MRI scan showed findings that had not improved over time.

Appellant submitted medical evidence from 2001 through 2003 a September 14, 2006 emergency medical services incident report; a July 11, 2005 emergency department report admitting him for acute chest pain and history of seizures progress reports of April 16 and February 13, 2007 from an unknown provider; and internet articles on spine and head injuries. Progress reports from Dr. Holper dated May 16 to October 10, 2006 reiterated that appellant remained disabled due to chronic low back pain. In an August 9, 2006 report, Dr. Clifford Carrol, a Board-certified internist, stated that appellant gained weight as a result of being immobile from the January 9, 2001 work incident and hepatitis developed secondary to the weight gain. He further stated that a liver biopsy suggested progressive liver disease secondary to fatty infiltration.

By decision dated October 18, 2007, the Office denied modification of the June 6, 2006 termination decision. It noted that appellant's seizures were never accepted as work related.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹ Having determined that an employee has a

¹ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

disability causally related to his or her federal employment, it may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.² The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for lumbar and cervical strains and a concussion. It terminated his compensation based on the January 25, 2005 report of Dr. Ballard who found no residuals of the accepted lumbar and cervical strains. The July 18, 2005 and January 30, 2006 reports of Dr. Moore found that appellant no longer had any objective evidence of a concussion and that his episodic loss of consciousness was of undetermined etiology.

Dr. Ballard stated that there were no objective findings to substantiate appellant's multiple and widespread orthopedic complaints. He explained that appellant's lumbar and cervical spine injuries sustained as a result of the January 9, 2001 work injury were soft tissue injuries which resolved within six weeks without treatment or within four to five weeks with physical therapy. Dr. Ballard opined that appellant was not experiencing any residuals of the accepted lumbar and cervical strain conditions. He further opined, from an orthopedic standpoint, that appellant could return to work without restrictions and that further medical treatment was not necessary.

Appellant did not submit any probative medical evidence supporting continuing disability causally related to his accepted lumbar and cervical strain conditions. Dr. Holper opined that appellant remained disabled due to his chronic low back pain syndrome which resulted from the January 9, 2001 work injury. However, he did not provide any further explanation supported by objective findings. Dr. Holper did not provide any findings on examination or address diagnostic testing to support his stated conclusion.

The Board finds that the weight of the medical evidence establishes that appellant's work-related orthopedic conditions resolved. Dr. Ballard stated that appellant did not have residuals of the accepted lumbar and cervical strains and he could return to work without restrictions. He addressed the findings on examination that supported his opinion. Dr. Ballard's report is sufficiently probative, rationalized and based upon a proper factual background.

With respect to whether appellant continued to have residuals from any neurological condition causally related to the work injury, the Office gave determinative weight to the medical opinion of Dr. Moore, who reviewed the entire record and statement of accepted facts and performed a thorough examination of appellant. He opined there were no objective medical findings to support residuals of a concussion. Dr. Moore noted that appellant's diagnoses regarding his loss of consciousness following the January 9, 2001 work injury were based solely on appellant's report. He opined that appellant was being treated for a seizure disorder and noted

² *Id.*

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

his episodic loss of consciousness was of an undetermined etiology. Dr. Moore noted a history of a 1999 automobile accident and the use of medication as possible sources of appellant's ongoing symptoms. He advised that any disability was due to nonwork-related conditions and that the MRI scans of the brain were normal.

The Board finds that the Office properly found that Dr. Moore's opinion represented the weight of the medical evidence and negated a causal relationship between appellant's current condition and his accepted concussion. Dr. Moore submitted a well-rationalized report which found that appellant's current disability was due to nonwork-related conditions and that he had no disability stemming from his accepted concussion condition. He properly concluded that appellant had no longer any residuals from the accepted condition and his opinion is sufficiently probative, rationalized and based on a proper factual background.

LEGAL PRECEDENT -- ISSUE 2

Where the Office meets its burden of proof in justifying termination of compensation benefits, the burden is on the employee to establish that any subsequent disability is causally related to an accepted employment injury.⁴

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.⁵ To establish a causal relationship between the condition claimed, as well as any attendant disability and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.⁶ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ Neither the fact that a 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.⁸

ANALYSIS -- ISSUE 2

Appellant disagreed with the Office's termination of benefits and submitted evidence regarding his conditions including his loss of consciousness. He did not submit any reasoned medical evidence establishing that he had any continuing residuals of the accepted conditions after the termination of benefits. Dr. Holper's reports did not specifically address or explain the reasons why appellant's continuing condition or disability was causally related to the accepted employment injury.

⁴ *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006); *see Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

⁵ *See Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁶ *Jennifer Atkerson*, 55 ECAB 317 (2004).

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ *Ernest St. Pierre*, 51 ECAB 623 (2000).

Regarding the conditions not accepted by the Office, appellant retains the burden of proof to establish the causal relationship. Dr. Brown opined that appellant's loss of consciousness episodes should be further studied with EEG video monitoring. However, no diagnosis was provided. Dr. Ansarinia diagnosed several conditions regarding appellant's loss of consciousness episodes. However, the physician did not address the cause of the diagnosed conditions. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.⁹ Thus, the reports of Dr. Brown and Dr. Ansarinia are insufficient to establish appellant's burden of proof.

Dr. Reed examined appellant on April 2, 2004 and diagnosed post-traumatic cephalgia and post-traumatic epilepsy conditions, which he opined were related to the January 9, 2001 work injury. He stated the fact that both the EEG and MRI scan of the brain were normal neither confirmed nor ruled out the diagnosis. Dr. Reed advised that the only way true epilepsy could be diagnosed or excluded would be for appellant to undergo an EEG study, which appellant refused to take. His report is speculative or equivocal. Although Dr. Reed indicated appellant's condition was work related, he then stated that he could not positively diagnose epilepsy without appellant undergoing an EEG study, which he refused to take.¹⁰ The Board finds that Dr. Reed's report is insufficient to establish appellant's burden of proof.

Other evidence submitted by appellant is insufficient to establish any other conditions due to the January 9, 2001 employment injury. In an August 9, 2006 report, Dr. Carrol attributed a liver condition secondary to the weight appellant gained as a result of being immobile from the January 9, 2001 work incident. However, there is no evidence that appellant was immobilized by his work injury or how much weight was gain as a result of such immobilization. Furthermore, the medical evidence reflects that both Dr. Lovell, an Office second opinion examiner, and Dr. Holper, appellant's attending physician, advised that appellant's liver condition was not work related and had been ongoing for years. It is well established that medical reports must be based on a complete and accurate factual and medical background and that medical opinions based on an incomplete or inaccurate history are of diminished probative value.¹¹ Therefore the medical reports with an inaccurate factual history have no probative value to establish causal relationship.

Additional reports of record do not contain any opinion regarding the cause of his reported condition. These include a September 13, 2006 emergency medical services incident report; a July 11, 2006 emergency department report; and progress reports dated April 16 and February 13, 2007 from an unknown provider. None of these reports provide a diagnosis or opinion regarding whether appellant remained disabled due to the accepted employment injury.¹²

⁹ *Conard Hightower*, 54 ECAB 796 (2003).

¹⁰ *L.R. (E.R.)*, 58 ECAB ____ (Docket No. 06-1942, issued February 20, 2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹¹ *James R. Taylor*, 56 ECAB 537 (2005).

¹² *Michael Smith*, 50 ECAB 313 (1999).

Appellant also submitted articles from the internet regarding spine and head injuries. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment. Such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.¹³

While appellant asserts that he did not receive timely notification of the three-day inpatient EEG monitoring test, the Board notes that appellant has not explained how this may have adversely affected him or why such testing was not otherwise available in view of evidence indicating that the Office sought to arrange such testing. Appellant also asserts that the second opinion reports from Dr. Ballard and Dr. Moore are biased, erroneous and inconsistent with what both physicians said during the examinations. However, he did not provide any evidence to establish those allegations. While appellant asserts that Dr. Moore reported an inaccurate history of injury as he stated that he slipped on a pill, the Board finds this interpretation of Dr. Moore's report inaccurate. The Board has reviewed Dr. Moore's report and finds that when Dr. Moore reviewed the medical evidence of file, he merely noted that a January 9, 2001 medical report stated that appellant had slipped on a pill. However, as he was provided with an accurate statement of accepted facts and based his opinion on this; there is no evidence that his report was not based on an accurate history. Likewise, the arguments of appellant's former attorney, Ms. Gilkey, are without merit. Her assertions generally relate to conditions not accepted by the Office. In any event, as the issue in the case is medical in nature, any such assertions regarding appellant's medical conditions would need to be supported by probative medical evidence.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits as a result of the accepted lumbar strain, cervical strain and concussion conditions effective June 6, 2006. The Board further finds that appellant has not met his burden to establish his post-traumatic cephalgia and post-traumatic epilepsy or any other diagnosed condition resulted from the accepted employment injury.

¹³ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2007 Office of Workers' Compensation Programs' decision is affirmed.

Issued: December 9, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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