

that appellant be evaluated by a physical therapist for neck pain and headache and be treated as needed. In a December 14, 2006 note, he stated that appellant was hit on the head by a bundle of magazines on August 5, 2006 while at work. Dr. Richardson found muscle spasms and trigger points in the neck, diagnosed musculoskeletal neck pain and headaches, and recommended medications and physical therapy.

By letter dated December 7, 2006, the Office advised appellant that information had been received from her treating physician indicating that she had sustained a recurrence of disability. It requested further information from her. Appellant responded by letter received on December 28, 2006 indicating that her pain had intensified greatly, that she remained on light duty but that she could not perform a different assignment requested by her supervisor. On January 24, 2007 the Office denied appellant's claim for a recurrence of total disability.

On February 26, 2007 the Office denied appellant's request for a shoulder condition to be included as a consequential injury of her claim.

On March 28, 2007 appellant requested an oral hearing.

On March 29, 2007 appellant accepted an offer of modified duty for four and a half hour shifts. On May 3, 2007 the Office denied appellant's recurrence claim beginning on March 29, 2007.

In a May 10, 2007 decision, the Office denied appellant's hearing request finding that it was untimely.

In a May 16, 2007 letter, the field nurse assigned by the Office asked Dr. Richardson to select one of three doctors: Dr. R. Peter Mirkin, a Board-certified orthopedic surgeon, Dr. Tom Reinsel or Dr. Michael Chabot, to treat appellant.

In a May 17, 2007 note, Dr. Richardson requested that Dr. Mirkin evaluate and treat appellant for chronic neck pain.

In a May 23, 2007 letter, Dr. Mirkin stated that he was evaluating appellant for a second opinion evaluation only. He stated that appellant related the August 5, 2006 injury when a bundle struck her in the head. Dr. Mirkin also stated that he reviewed reports from Dr. Richardson which documented extensive treatment. He performed a physical examination finding that her range of motion of the cervical spine was 90 percent of normal with no spasms, motor and sensory examination intact and normal peripheral pulses. Dr. Mirkin reviewed the computerized tomography (CT) scan and did not see any new disc herniation or severe degenerative changes above and below the fusion at C5-6. He opined that appellant had cervical spondylosis. Dr. Mirkin noted that she "may have had a strain but certainly her symptomatology has persisted for much longer than a strain should." He found no objective reason for appellant's persistent symptomatology. Dr. Mirkin recommended that a myelogram be performed.

On May 30, 2007 a CT cervical spine myelography was performed by Dr. Lubuan Wang, Board-certified in radiology, and revealed postsurgical changes at C5-6, that alignment was near anatomic with straightening of normal lordotic curvature which could suggest underlying muscle spasm. Dr. Wang diagnosed minimal posterior osteophytes at C5-6 and C6-7 without central

canal stenosis and found no central canal stenosis or neural foraminal stenosis identified within the limits of the examination.

In a June 6, 2007 letter, Dr. Mirkin stated that he saw appellant for a second medical evaluation. He reviewed the myelogram and found signs of a fusion at C5-6, minimal spondylosis, no compression of nerve roots and no herniated disc and no evidence of neuroforaminal stenosis. Dr. Mirkin stated that her examination was unchanged. Appellant reported to Dr. Mirkin that her neck was swollen but he did not see it. Dr. Mirkin stated that he was unable to find a structural abnormality of her neck as a result of her work injury therefore there was no reason to pose restrictions on her as a result of her neck condition. He found appellant had reached maximum medical improvement from her work injury and could return to work without restrictions. In a June 14, 2007 letter, appellant told the Office that she did not feel that Dr. Mirkin properly performed a physical examination.

In a June 20, 2007 letter, the Office asked Dr. Richardson to review Dr. Mirkin's report and respond as to whether he agreed with Dr. Mirkin's opinion that appellant could be released to regular duty. On June 26, 2007 Dr. Richardson responded "no" and submitted a work restriction form limiting appellant to four hours of work per day indefinitely. He stated that it was "undetermined" whether appellant had reached maximum medical improvement as she had further evaluations with a neurosurgeon.

On July 17, 2007 the Office terminated appellant's disability compensation and medical benefits.

In an August 5, 2007 letter, appellant objected to the July 17, 2007 termination and argued that there was evidence of her accepted neck strain condition in the enclosed letter from Dr. Thomas R. Forget, Jr., Board-certified in neurological surgery.

In his June 25, 2007 letter, Dr. Forget reported that he examined appellant on the same day and found slight decreased range of motion of her neck due to a muscle spasm in her neck. He opined that appellant was suffering from neck strain and whiplash-type injury and recommended pain management. Dr. Forget also reported appellant's history, that she was hit in the head at work in August 2006 and had had a cervical fusion at C5-6.

In a December 11, 2007 merit decision, an Office hearing representative conducted a review of the written record and affirmed the termination of appellant's disability and medical benefits finding that the weight of the medical evidence was with Dr. Mirkin who found that appellant had no residuals of the accepted injury and could resume full-time work.

LEGAL PRECEDENT

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

¹ *Joseph Roman*, 55 ECAB 233 (2004), *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

establishing that the disability has ceased or that it is no longer related to the employment.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

ANALYSIS

The Board finds that the Office improperly terminated appellant's compensation benefits effective December 11, 2007 on the grounds that she had no further employment-related disability or residuals of her condition. In order to terminate compensation and medical benefits the Office must establish that the accepted condition has ceased or is no longer related to the employment incident.⁵ As the Office has accepted appellant for neck strain it bears the burden to establish either that the neck strain has resolved or that it is no longer related to the August 5, 2006 employment incident. The Office has not met its burden to terminate appellant's compensation and medical benefits.

The Board finds Dr. Mirkin's reports not to be based on an accurate factual history nor sufficiently well rationalized.⁶ Dr. Mirkin opined that appellant "may have had a strain but certainly her symptomatology has persisted much longer than a strain should." In order for his reports to be based on an accurate factual history Dr. Mirkin must accept as fact what the Office has accepted, that appellant had a neck strain due to the August 5, 2006 employment incident. As his opinion is not based on accurate factual history it is of no probative value on the issue of whether the condition has resolved. Additionally Dr. Mirkin's opinion is speculative. He concludes that because a strain *should* have resolved by the date of the examination that appellant's current symptomatology could not be from a strain. Finally Dr. Mirkin never definitively opines that appellant's neck strain had resolved. To establish that a condition has resolved the Office must provide a rationalized medical opinion based on proper factual and medical background which concludes that the condition has completely resolved. The Office based its decision on reports that do not support its conclusion that appellant's neck strain condition had resolved.

The Office did not address Dr. Forget's report. Dr. Forget reported appellant's factual history, performed a physical examination and diagnosed neck strain and whiplash-type injury. Dr. Mirkin's and Dr. Forget's reports are assessed as to the sufficiency of the medical rationale provided to support their conclusions. Dr. Mirkin's report has no probative value as it is

² *Id.*

³ *Joseph Roman*, 55 ECAB 233 (2004), *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

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

⁶ Dr. Mirkin is a treating physician, not an impartial medical examiner, therefore his report is not entitled to special weight. When impartial medical specialists are used to resolve a medical conflict their reports are given special weight if sufficiently well rationalized and based upon a proper factual background. *Guiseppe Aversa*, 55 ECAB 164 (2003).

speculative and based on an inaccurate factual history. Dr. Forget's report supports a diagnosis of neck strain based on physical examination. The burden is not on appellant to prove that her neck strain still exists but rather the burden is on the Office to prove that the neck strain has resolved. The weight of the medical evidence does not rest with Dr. Mirkin therefore the Office has not met its burden.

For the foregoing reasons, the Board finds that the Office did not properly terminate appellant's medical benefits, and failed to meet its burden of proof to terminate appellant's wage-loss compensation.

CONCLUSION

The Board finds that the Office improperly terminated appellant's compensation and medical benefits as it did not meet its burden of proof to establish that appellant's accepted condition had ceased.

ORDER

IT IS HEREBY ORDERED THAT the December 11, 2007 decision of the Office of Workers' Compensation Programs be reversed.

Issued: October 15, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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