



On June 16, 2008 Dr. Timothy McNamara, an internist, stated that appellant was recovering from a fractured left clavicle and that he could return to light-duty work. In an accompanying attending physician's report, he advised that appellant's fracture was self-healing and that appellant would require another six weeks to make sure that the fracture was completely healed. On July 25, 2008 Dr. McNamara noted that appellant was back to running and lifting weights and could return to full duty. Also on July 25, 2008 he provided a report and a work excuse releasing appellant to return to work with no restrictions.

By decision dated August 19, 2008, the Office terminated appellant's entitlement to disability compensation on the basis that appellant was no longer disabled due to his accepted condition and was capable of full-duty work. It noted appellant's claim remained open for medical care of the accepted condition.

On appeal, appellant stated that his supervisors were on a fire call on July 25, 2008 and he was unable to complete a test due to this. He also stated that he had been in prison since August 3, 2008 and was scheduled for release on December 1, 2008.

### **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.<sup>1</sup> After it has determined that an employee has disability causally related to his 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.<sup>2</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>3</sup>

### **ANALYSIS**

The Board finds that the Office met its burden of proof to terminate appellant's wage-loss compensation.<sup>4</sup> The accepted condition in this case is a left clavicle fracture. On July 25, 2008 Dr. McNamara, appellant's attending physician, released him to full-duty work. He noted that appellant had resumed running and lifting weights. Dr. McNamara found no basis on which to restrict appellant's physical activities with regard to the healed clavicle fracture. The Board finds that, based on Dr. McNamara's July 25, 2008 opinion, appellant could return to full-duty work, the Office met its burden of proof to terminate appellant's disability compensation effective August 19, 2008 because the medical evidence established that employment-related disability had ceased.

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<sup>1</sup> *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>2</sup> *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>3</sup> *See Del K. Rykert*, 40 ECAB 284 (1988).

<sup>4</sup> There is no indication that appellant was in receipt of disability benefits. Therefore, pretermination notice is not at issue. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6(a) (March 1997); *Winton A. Miller*, 52 ECAB 405 (2001).

On appeal, appellant stated that his supervisors were away on July 25, 2008 and he was unable to complete a test due to this. To the extent that appellant asserts that he was entitled to wage-loss compensation on that date, the Board notes that the Office has not adjudicated entitlement to wage-loss compensation for any period prior to August 19, 2008 and there is no claim in the record for a particular period of wage-loss compensation.<sup>5</sup> As noted, the medical evidence supports that appellant was able to work full duty without restriction on July 25, 2008.<sup>6</sup>

**CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's disability compensation benefits effective August 19, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated August 19, 2008 is affirmed.

Issued: August 13, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>5</sup> See 20 C.F.R. § 501.2(c) (the Board only has jurisdiction over final decisions of the Office).

<sup>6</sup> The term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. See 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999). Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues, which must be proved by a preponderance of the reliable, probative and substantial medical evidence. *Fereidoon Kharabi*, 52 ECAB 291 (2001).