



He was released to return to light work with restrictions on August 12, 1998. On January 20, 1999 the Office accepted appellant's claim for a cervical strain.

Appellant received treatment from Dr. Gregory W. Stewart, a Board-certified physiatrist. In an August 3, 2004 report, Dr. Stewart noted that appellant was experiencing cervical and lumbar spine pain. He recommended a better chair with lumbar support and prescribed medication. In an August 20, 2004 report, Dr. Stewart listed his impression as cervical spine pain with radiation in the right shoulder. He also noted complaints of low back pain. Dr. Stewart recommended referral for a psychiatric consultation and noted that it may be advisable for appellant to see a pain management specialist. He was unsure as to how he could provide any further help to appellant. On October 8, 2004 Dr. Stewart discharged appellant from care.

On July 13, 2005 the Office approved appellant's request to change his physician to Dr. Windsor Dennis, an orthopedic surgeon. Appellant stopped working his position for the employing establishment in New Orleans when it closed following Hurricane Katrina in August 2005. He relocated to Houston and was unable to obtain work. Thereafter appellant received compensation for total disability.

On January 17, 2006 the Office requested that appellant be examined by a physician. Appellant was unable to find a treating physician in the Houston area.

By letter dated April 19, 2006, the Office referred appellant to Dr. Bernard Albina, a Board-certified orthopedic surgeon. In a report dated April 26, 2006, Dr. Albina diagnosed a chronic sprain of the right shoulder and no objective finding of any cervical sprain. He noted that appellant's subjective complaints outweighed the objective findings. Dr. Albina opined that appellant was not able to perform the date-of-injury job as a flat sorter clerk because it involved heavy labor and heavy exertion to the shoulder and would cause an aggravation of his symptoms and recurrence of pain. He completed a work restriction form, noting that appellant was limited to reaching above the shoulder for two hours per day and limited pushing/pulling/lifting up to 50 pounds four hours a day. In a December 13, 2006 report, Dr. Albina stated, "The current diagnosis specifically related to the [August 11, 1998] work injury is a resolved cervical strain and a resolved sprain to the right shoulder." He opined that appellant was capable of performing his date-of-injury job as a flat sorter/machine clerk with the employing establishment.

On December 21, 2006 the Office issued a notice of proposed termination of compensation benefits. No further evidence was received.

By decision dated January 24, 2007, the Office terminated appellant's medical and wage-loss compensation effective February 18, 2007.

On March 1, 2007 appellant requested reconsideration. He noted that he received treatment from Dr. Stewart and saw Dr. Dennis on one occasion but that his treatment had been interrupted by Hurricane Katrina. Appellant noted difficulty getting his medical records as the offices of Dr. Stewart and Dr. Dennis were damaged and closed due to the hurricane. He also noted difficulty in finding a physician in Houston. Appellant contended that he could only work in a limited-duty capacity.

On February 23, 2007 appellant was seen by Dr. Dennis. He submitted Dr. Dennis' orders for a magnetic resonance imaging (MRI) scan and computerized tomography (CT) of his right shoulder.

By decision dated April 19, 2007, the Office denied modification of the January 24, 2007 termination decision.

By letter dated September 6, 2007, appellant requested reconsideration and submitted the results of a May 16, 2007 MRI scan. It diagnosed tendinosis, peritendinitis of the supraspinatus tendon secondary to acromioclavicular (AC) joint arthropathy with pannus and spurring and calcific or ossific density anterior to the humeral head with irregularity suggesting the possibility of an internal impingement syndrome. A CT of the same date was interpreted as showing bony or calcific density anterior to the humeral head laterally suggesting chronic calcific bursitis or old avulsion type injury. AC joint arthropathy was also noted. In an August 22, 2007 progress note, Dr. Dennis noted that appellant's right shoulder range of motion was limited. He advised that appellant should be on limited duty.

By decision dated December 7, 2007, the Office denied modification of the April 19, 2007 decision.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup> It may not terminate compensation without establishing that disability ceased or that it was 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>

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that an employee no longer has residuals of an employment-related condition which require further medical treatment.<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that on August 11, 1998 appellant sustained a cervical strain. It paid appropriate medical and compensation benefits. Appellant's medical and compensation benefits were terminated effective February 18, 2007 as the Office found he no longer had any disability or residuals due to his accepted condition.

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<sup>1</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

<sup>2</sup> *J.M.*, 58 ECAB \_\_\_ (Docket No. 06-661, issued April 25, 2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>3</sup> *T.P.*, 58 ECAB \_\_\_ (Docket No. 07-60, issued May 10, 2007); *Larry Warner*, 43 ECAB 1027 (1992).

<sup>4</sup> *T.P.*, *supra* note 3; *Furman G. Peake*, 41 ECAB 361, 364 (1990).

The Board finds that the Office properly terminated appellant's wage-loss compensation and medical benefits effective February 18, 2007. In an April 19, 2006 report, Dr. Albina noted that appellant had no objective findings to support residuals of the accepted cervical sprain. He noted that appellant's subjective complaints outweighed the objective findings. On December 13, 2006 Dr. Albina noted that appellant's cervical strain was resolved and a resolved sprain to the right shoulder. He advised that appellant was capable of performing his date-of-injury job as a flat sorter/machine clerk with the employing establishment.

At the time of the termination of appellant's benefits on February 18, 2007, there was no recent medical opinion establishing that appellant still had residuals from the injury. The last substantive report of Dr. Stewart was dated August 20, 2004, two and one-half years earlier. Appellant indicated that he was seen by Dr. Dennis in July or August 2005 but no medical report was submitted. The weight of medical opinion is represented by the report of Dr. Albina, a specialist in orthopedic surgery, who provided an opinion based on an accurate history of appellant's 1998 injury and medical treatment. On examination, appellant was found in no acute distress and no spasm was found on examination of the cervical spine. Based on his findings, Dr. Albina found that appellant's accepted cervical strain had resolved, with no clinical evidence of a cervical herniated disc or torn rotator cuff tendon. He advised that appellant was capable of his date-of-injury position full time without physical restrictions. The opinion of Dr. Albina is sufficient to establish that appellant no longer has residuals of the accepted employment-related cervical condition. Accordingly, the Board finds that the Office properly terminated appellant's medical and compensation benefits effective February 18, 2007.

### **LEGAL PRECEDENT -- ISSUE 2**

Where the Office meets its burden of proof to justify the termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the accepted employment injury.<sup>5</sup> The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury, and must explain from a medical perspective how the current condition is related to the injury.<sup>6</sup>

### **ANALYSIS -- ISSUE 2**

Subsequent to the Office's termination of benefits effective February 18, 2007, appellant submitted medical reports from Dr. Dennis and results from an MRI scan and CT. Neither the MRI scan nor CT reports indicate that appellant has any objective evidence of residuals

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<sup>5</sup> *K.E.*, 60 ECAB \_\_\_ (Docket No. 08-1461, issued December 17, 2008). *See also Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity); *Maurice E. King*, 6 ECAB 35 (1953).

<sup>6</sup> *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

specifically related to the accepted cervical strain of August 11, 1998. Dr. Dennis, in his August 22, 2007 note, indicated that appellant's right shoulder range of motion was limited and advised that appellant should be on limited duty. However, he did not address whether appellant had residuals from his accepted cervical strain. Therefore, Dr. Dennis' opinion is of diminished probative value.

**CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective February 18, 2007. The Board further finds that appellant did not meet his burden of proof to establish that he had any continuing disability or residuals after February 18, 2007 causally related to his accepted employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 7 and April 19, 2007 are affirmed.

Issued: February 10, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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