



## **FACTUAL HISTORY**

This is the second appeal in this case. The Board issued a decision on October 24, 2006 in which it affirmed the December 15, 2005 and April 26, 2006 decisions of the Office concerning her entitlement to Office compensation after October 2, 2004.<sup>1</sup> The Board found that the Office properly terminated her compensation effective October 2, 2004 based on the opinion of Dr. Barry Lotman, a Board-certified orthopedic surgeon who served as an Office referral physician. Dr. Lotman's August 12, 2004 report was found to contain a well-rationalized opinion that appellant no longer had residuals of her accepted employment injuries.<sup>2</sup> The Board also found that the Office properly determined that the medical evidence submitted by appellant after October 2, 2004 did not show that she had residuals of her employment injuries after that date. The Board found that a February 13, 2006 report of Dr. Richard E. Gayles, an attending Board-certified anesthesiologist, did not show that appellant continued to have residuals of her accepted employment injuries after October 2, 2004. The Board noted that, although Dr. Gayles stated that appellant had carpal tunnel syndrome, foraminal stenosis and spondylitic cervical changes related to her accepted employment injuries, he did not provide sufficient medical rationale in support of this opinion.<sup>3</sup> The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

Appellant asserted that she had residuals of her accepted employment injuries after October 2, 2004. In a January 10, 2007 report, Dr. Rajbir S. Minhas, an attending orthopedic surgeon, indicated that appellant presented complaining of pain in her neck and arms. He stated that the motor and sensory examination of appellant's neck and arms was unremarkable, but that she complained of neck pain on examination and exhibited some restricted neck motion.

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<sup>1</sup> Docket No. 06-1402 (issued October 24, 2006). The Office accepted that, by mid 2003, appellant sustained bilateral carpal tunnel syndrome, bilateral lateral epicondylitis and aggravation of cervical spondylosis due to typing on her computer, moving materials and engaging in other repetitive motions at work. It paid her appropriate compensation for periods of disability. On September 17, 2003 appellant underwent a left carpal tunnel release that was authorized by the Office. After a period of work stoppage of more than a year, she returned to light-duty work for the employing establishment in September 2004 for 12 hours per week. Appellant retired from the employing establishment effective April 1, 2005 on disability retirement.

<sup>2</sup> Dr. Lotman stated that examination of appellant's cervical spine revealed normal cervical lordosis with mild midline tenderness and slight paraspinous discomfort without associated spasm, but that there was no pain or spasm in the periscapular musculature, cervical trapezius or anterior cervical triangle. He noted that evaluation of her upper extremities revealed normal and symmetric strength and sensation and indicated that she exhibited irregular responses on Tinel's sign, Phalen's sign and vibratory sense perception testing that had no known anatomic explanation. Dr. Lotman concluded that appellant had returned to her preinjury status and diagnosed cervical spondylosis with symptom magnification noting that there were no physical findings to support this condition but that diagnostic testing showed a small annular bulge at C6. He did not provide any indication that appellant continued to have bilateral carpal tunnel syndrome or lateral epicondylitis at the time of his evaluation and his findings did not otherwise support the existence of these conditions.

<sup>3</sup> In a March 14, 2005 report, Dr. Gary Weiss, an attending Board-certified neurologist, indicated that electromyogram and nerve conduction velocity testing showed that appellant had bilateral carpal tunnel syndrome. He also diagnosed bulging C5-6 disc with mild preexisting spondylitis, but he did not indicate that any of appellant's conditions were related to her previously accepted employment injuries.

Dr. Minhas diagnosed degenerative disc disease and herniated disc of the cervical spine, cervical spondylosis and cervical sprain.<sup>4</sup>

In an April 16, 2007 deposition obtained by appellant's attorney, Dr. Gayles stated that the first time he saw appellant after December 2002 was in July 2003 at which time she chiefly complained of neck and left shoulder pain. He diagnosed cervical spondylosis, possible cervical radiculopathy, carpal tunnel syndrome and tendinitis at that time. Dr. Gayles indicated that when he last examined appellant on August 14, 2006 she had cervical spondylosis, some myofascial pain related to cervical spondylosis, carpal tunnel syndrome and some thoracic pain.<sup>5</sup> He stated that someone who predominantly worked at a computer terminal with less than ideal body mechanics, such as appellant, could suffer repetitive strains and aggravate any underlying spinal conditions. Dr. Gayles posited that appellant's job duties contributed to the aggravation of her preexisting cervical spondylosis noting that holding certain postures for extended periods (including holding arms out while typing) can aggravate underlying spondylosis or mild degenerative disease. He stated that it was possible to have irritation of the back joints from holding certain postures or being subjected to certain chronic forces and stated that overuse of the muscles which hold the neck in certain postures can cause spasms and chronic shortening of those muscles as well as pain. Dr. Gayles indicated that if the body passes a certain injury threshold it might stay in a state of constant injury or pain. He stated that radio frequency ablation testing from June 2004 showed that appellant neck problems were "probably caused by perhaps soft tissue but more likely discs" and indicated that her symptoms remained relatively consistent for about three years between 2003 and 2006. Dr. Gayles concluded that appellant's condition when he last saw her in August 2006 was related to the repetitive trauma which caused her accepted employment injuries. He stated that he did not think that appellant engaged in symptom magnification during her visits with him and indicated that she could only perform sedentary work.

The record contains numerous periodic reports, dated between March 2006 and February 2008, in which Dr. Gayles indicated that appellant reported pain and other symptoms in her neck and arms. He originally diagnosed cervical spondylosis, residual myofascial pain and carpal tunnel syndrome. Subsequently, Dr. Gayles did not provide a diagnosis of carpal tunnel syndrome. In an August 14, 2006 report, he stated that appellant's physical examination was unchanged from her prior visit, but he did not provide detailed examination findings. Dr. Gayles diagnosed cervical spondylosis, residual myofascial pain, carpal tunnel syndrome and thoracic pain. It does not appear that Dr. Gayles saw appellant between September 2006 and May 2007.<sup>6</sup>

In a February 20, 2008 decision, the Office found that appellant did not meet her burden of proof to establish that she had residuals of her accepted employment injuries after

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<sup>4</sup> Dr. Minhas produced several similar reports through mid 2007.

<sup>5</sup> Dr. Gayles also noted in another portion of the deposition that in August 2006 he was "not sure of the status" of appellant's carpal tunnel syndrome.

<sup>6</sup> Appellant moved to Ohio after the August 14, 2006 visit to Dr. Gayles. She returned to Florida in mid 2007 and began seeing Dr. Gayles again.

October 2, 2004. It indicated that the April 16, 2007 deposition of Dr. Gayles did not contain medical rationale in support of its opinion on causal relationship.

### **LEGAL PRECEDENT**

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>7</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>8</sup> After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.<sup>9</sup>

The Board has held that the fact that a condition manifests itself or worsens during a period of employment<sup>10</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>11</sup> does not raise an inference of causal relationship between a claimed condition and employment factors. The Board has held that a medical opinion not fortified by medical rationale is of little probative value regarding medical matters.<sup>12</sup>

### **ANALYSIS**

The Office accepted that, by mid 2003, appellant sustained bilateral carpal tunnel syndrome, bilateral lateral epicondylitis and aggravation of cervical spondylosis due to typing on her computer, moving materials and engaging in other repetitive motions at work. After a period of work stoppage of more than a year, she returned to light-duty work for the employing establishment in September 2004 for 12 hours per week. Based on the opinion of Dr. Lotman, a Board-certified orthopedic surgeon who served as an Office referral physician, the Office terminated appellant's compensation effective October 2, 2004 on the grounds that she had no residuals of her accepted employment injury after that date. Appellant retired from the employing establishment effective April 1, 2005 on disability retirement.

The Board issued a decision on October 24, 2006 in which it found that the Office had properly terminated appellant's effective October 2, 2004. After the Office's September 28, 2004 decision terminating appellant's compensation effective October 2, 2004, appellant submitted additional medical evidence contending that she was entitled to compensation after

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<sup>7</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>8</sup> *Id.*

<sup>9</sup> *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

<sup>10</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>11</sup> *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

<sup>12</sup> *See George Randolph Taylor*, 6 ECAB 986, 988 (1954).

October 2, 2004 due to residuals of her employment injuries. The burden shifted to appellant to establish that she is entitled to compensation after October 2, 2004.<sup>13</sup> The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that she had residuals of her employment injuries after October 2, 2004.

In an April 16, 2007 deposition, Dr. Gayles, an attending Board-certified anesthesiologist, indicated that when he last examined appellant on August 14, 2006 she had cervical spondylosis, some myofascial pain related to cervical spondylosis, carpal tunnel syndrome and some thoracic pain.<sup>14</sup> He stated that someone who predominantly worked at a computer terminal with less than ideal body mechanics, such as appellant, could suffer repetitive strains and aggravate any underlying spinal conditions. Dr. Gayles stated that appellant's job duties contributed to the aggravation of her preexisting cervical spondylosis noting that holding certain postures for extended periods (including holding arms out while typing) can aggravate underlying spondylosis or mild degenerative disease. He noted that overuse of the muscles which hold the neck in certain postures can cause spasms and chronic shortening of those muscles as well as pain and indicated that if the body passes a certain injury threshold it might stay in a state of constant injury or pain. Dr. Gayles noted that appellant's symptoms remained relatively consistent for about three years between 2003 and 2006 and concluded that appellant's condition when he last saw her in August 2006 was related to the repetitive trauma which caused her accepted employment injuries.

This deposition, however, is of limited probative value on the relevant issue of the present case. Dr. Gayles did not provide adequate medical rationale in support of his conclusion on causal relationship.<sup>15</sup> He did not describe appellant employment injuries in any detail and explain the medical process through which they continued to cause disability or the need for medical treatment after October 2, 2004. Although Dr. Gayles discussed the effect of body mechanics on neck and upper extremity conditions, he did so in the most general terms and did not explain how the particular type of accepted conditions appellant sustained could have continued to exist after October 2, 2004. The mere fact that appellant remained symptomatic after October 2, 2004 would not show that the continuing symptoms were employment related.<sup>16</sup> Dr. Gayles did not explain why the carpal tunnel syndrome condition which was found on testing in March 2005 was related to the condition which was originally accepted.<sup>17</sup> Appellant has not filed a claim for a newly acquired carpal tunnel syndrome condition and the medical evidence

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<sup>13</sup> See *supra* note 9 and accompanying text.

<sup>14</sup> Dr. Gayles also noted in another portion of the deposition that in August 2006 he was "not sure of the status" of appellant's carpal tunnel syndrome. The Board previously found that a February 13, 2006 report of Dr. Gayles did not show that appellant continued to have residuals of her accepted employment injuries after October 2, 2004.

<sup>15</sup> See *supra* note 12 and accompanying text.

<sup>16</sup> See *supra* notes 10 and 11 and accompanying text.

<sup>17</sup> The Board notes that Dr. Gayles did not consistently diagnose carpal tunnel syndrome after August 2006.

does not support the finding of such a new employment-related condition.<sup>18</sup> Dr. Gayles did not explain why appellant's cervical and upper extremity problems were not due to the natural progression of her preexisting degenerative cervical condition or some other nonwork-related condition.

The record also contains numerous periodic reports, dated between March 2006 and February 2008, in which Dr. Gayles indicated that appellant reported pain and other symptoms in her neck and arms. In the earlier of these reports, he generally diagnosed cervical spondylosis, residual myofascial pain and carpal tunnel syndrome. In the later reports, Dr. Gayles did not provide a diagnosis of carpal tunnel syndrome. However, Dr. Gayles did not provide any indication in these reports that the diagnosed conditions were related to appellant's accepted injuries. In reports dated between early and mid 2007, Dr. Minhas, an attending orthopedic surgeon, indicated that appellant presented complaining of pain in her neck and arms and diagnosed degenerative disc disease and herniated disc of the cervical spine, cervical spondylosis and cervical sprain. He did not provide any opinion that these conditions were employment related.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she had residuals of her accepted employment injuries after October 2, 2004.

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<sup>18</sup> Dr. Gayles did not describe the light-duty work that appellant performed for 12 hours per week between September 2004 and her retirement in April 2005 nor did he provide a clear indication that appellant sustained a new injury due to these limited duties.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' February 20, 2008 decision is affirmed.

Issued: January 21, 2009  
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