

had resolved, and therefore the Office did not meet its burden of proof to terminate medical compensation for that condition. In addition, the Board set aside a July 29, 2005 Office decision finding that appellant's March 28, 2005 application for reconsideration was untimely and failed to show clear evidence of error. The Board found that the application for reconsideration was timely and the case was remanded for an appropriate decision. The history of the case is provided in the Board's prior decision and is incorporated herein by reference.

The July 29, 2005 Office decision made the following findings:

“In reviewing the previous [r]eferee report from Dr. Branick, it is apparent that the weight of medical evidence not only established that the claimant was not entitled to compensation or a right shoulder surgery, but also established that the cervical herniation was related to the work injury of May 31, 1994. As such, the Office should have expanded the claim to include the cervical herniation as work-related and erred in not accepting this condition. However, as discussed below, the weight of medical evidence also determined that the cervical herniation condition no longer existed per Second Opinion Examiners Dr. Clarence Boyd and Dr. Stanley Baer as well as Referee Examiners Dr. Richard Dedo and Dr. James Glick. Therefore, the Office shall expand the claim to include the condition of cervical herniation for the closed period of May 31, 1994 to August 20, 2000.”

On remand, the Office requested a supplemental report from Dr. Glick. In a March 23, 2006 letter, it requested that Dr. Glick provide an opinion as to whether there were objective findings to show continuing residuals of the cervical strain. In a report dated April 4, 2006, Dr. Glick stated that he had reviewed his prior reports dated October 31, 2001 and June 3, 2002. He stated that there were no objective findings to explain her symptoms, so there was no objective evidence of a cervical strain. Dr. Glick stated that an MRI scan in 1994 showed disc protrusions, but there was no clinical evidence to substantiate the findings.

By decision dated April 11, 2006, the Office found that Dr. Glick's report established the cervical strain had resolved and any prior authorization was terminated. Appellant requested an appeal with the Board. By order dated January 31, 2007, the Board remanded the case for proper assemblage of the case record.² In a letter dated May 14, 2007, the Office issued a notice of proposed termination of medical benefits for the cervical strain, based on the April 4, 2006 report from Dr. Glick.

In a decision dated June 15, 2007, the Office terminated medical benefits as of June 15, 2007. It noted that appellant had argued that Dr. Glick was not advised a cervical disc herniation was an accepted condition. The Office found that Dr. Glick explained his findings and the only issue on which the Board requested clarification was residuals of the cervical strain.

Appellant requested a review of the written record by an Office hearing representative. In a decision dated May 6, 2008, the hearing representative affirmed the June 15, 2007 termination decision. The hearing representative found the July 29, 2005 Office decision “was

² Docket No. 06-1211 (issued January 31, 2007).

incorrect in concluding that Dr. Branick's report established that the claimant's cervical herniation was related to her May 31, 1994 employment injury." The hearing representative also found that Dr. Glick's rationale was that there were no objective findings, and therefore even if the Office had advised him that cervical herniation was an accepted condition, there would not be a basis for a continuing cervical condition.

LEGAL PRECEDENT

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 appellant no longer has residuals of an employment-related condition which require further medical treatment.³

ANALYSIS

The Office further developed the medical evidence by requesting a supplemental report from Dr. Glick. In this regard it is well established that the physician must be provided an accurate factual background, opinions based on an inaccurate or incomplete background are of diminished probative value.⁴ The Office stated in its July 29, 2005 decision that it was expanding the claim to include a cervical disc herniation. The hearing representative acknowledged that the Office had stated it was expanding the claim, and did not provide such information to Dr. Glick or request an opinion as to whether the cervical disc herniation had resolved. The March 23, 2006 letter, for example, refers only to a cervical strain.⁵

The hearing representative makes a finding that it was "incorrect" for the July 29, 2005 decision to accept a cervical disc herniation, because the medical evidence was, in his view, insufficient. But the accepted conditions remain accepted until the Office properly rescinds acceptance of the condition in accord with well-established precedent.⁶ At the time of the request for a supplemental report from Dr. Glick, the accepted conditions were cervical strain and cervical disc herniation. To the extent that the Office attempted to make a finding in the July 29, 2005 decision that the condition had resolved as of August 20, 2000, the July 29, 2005 decision was not the proper vehicle for this adverse determination. The July 29, 2005 decision was a nonmerit decision finding that the application for reconsideration was untimely and failed to show clear evidence of error. A proper determination that the accepted disc herniation had

³ *Furman G. Peake*, 41 ECAB 361 (1990).

⁴ *Gwendolyn Merriweather*, 50 ECAB 411 (1999) (referee physician was not provided with a proper factual background).

⁵ It is not clear whether the Office provided a statement of accepted facts to Dr. Glick. In his April 4, 2006 report, he referred only to the March 23, 2006 letter.

⁶ *See Delphina Y. Jackson*, 55 ECAB 373 (2004).

resolved should have been issued in a separate merit decision with appeal rights, in accord with Office procedures for termination of benefits.⁷

The Board accordingly finds that Dr. Glick was not provided a proper factual background and his report did not resolve the issue. The Office did not properly advise Dr. Glick of the accepted conditions in the case. The hearing representative's finding that it would not have mattered to Dr. Glick is inconsistent with the established principle that a physician must be provided a complete background to support a rationalized medical opinion.⁸ Dr. Glick was not properly notified that cervical disc herniation was an accepted condition and he did not provide an opinion that the condition had resolved. The Office did not meet its burden of proof to terminate medical benefits in this case.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate medical benefits for the accepted cervical conditions.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 6, 2008 is reversed.

Issued: June 15, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapters 2.1400.4 and 2.1400.6 (March 1997).

⁸ See *Gwendolyn Merriweather*, *supra* note 4.