



## ISSUE

The issue is whether the Office properly terminated appellant's compensation for wage-loss and medical benefits effective November 6, 2007 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injury.<sup>1</sup>

## FACTUAL HISTORY

On May 17, 2002 appellant, then a 42-year-old letter carrier, filed an occupational disease claim alleging that she developed right elbow tendinitis as a result of employment activities. The Office accepted the claim for right lateral elbow tendinitis, right lateral epicondylitis and right ulnar nerve lesion. Appellant underwent approved surgeries on January 12, 2004 (debridement of the right lateral epicondylitis) and July 10, 2006. The Office paid compensation for total disability until October 3, 2006, when appellant returned to work without restrictions.

In an October 3, 2006 report, appellant's treating physician, Dr. Peter J. Campbell, a Board-certified orthopedic surgeon, stated that appellant continued to experience pain and decreased pain and strength in her right hand and forearm. He noted a knot on the dorsal aspect of the right hand and a small nodule along the extensor tendon to the ring finger, which was nontender. Dr. Campbell opined that appellant could return to work without restrictions. On October 31, 2006 he stated that appellant had an immediate occurrence of pain and swelling in her right upper extremity when she returned to work.

The record contains a December 6, 2006 functional capacity evaluation (FCE), which was performed at the request of Dr. Campbell. The report reflected that there was no objective data establishing that appellant was incapable of performing her date-of-injury position. On December 29, 2006 Dr. Campbell opined that based on the results of the FCE, appellant was capable of performing her regular job.

On March 23, 2007 the Office referred appellant to Dr. Michael Weng, a Board-certified orthopedic surgeon, for a second opinion to determine whether appellant had any residuals related to her accepted conditions and, if so, whether she was disabled as a result of those residuals. It asked Dr. Weng to provide objective findings to demonstrate the condition of appellant's elbow and specifically advised him to perform a magnetic resonance imaging (MRI) scan, electromyogram (EMG) and nerve conductive velocity (NCV) if necessary to determine her current condition.

The record contains an April 10, 2007 report from Dr. Kent H. Chou, a Board-certified orthopedic surgeon, who stated that appellant had persistent, diffuse elbow and forearm

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<sup>1</sup> In its October 1, 2008 decision, the Office hearing representative affirmed the Office's November 6, 2007 decision terminating appellant's compensation and medical benefits; however, she remanded the case for further development of the medical evidence as to whether she continued to suffer residuals due to the accepted condition after the date of termination. As the record does not contain a final decision regarding the issue of continuing disability, the Board does not have jurisdiction over this matter. *See* 20 C.F.R. § 501.2(c) (the Board has jurisdiction to consider and decide appeals from final decisions; there shall be no appeal with respect to any interlocutory matter disposed of during the pendency of the case).

discomfort following two separate elbow procedures related to treatment of lateral epicondylitis and radial tunnel syndrome.

In a report dated April 30, 2007, Dr. Weng indicated that he had reviewed the medical record including a March 21, 2003 EMG report. Noting that appellant had most recently undergone surgery on July 10, 2006, he related appellant's complaints of constant pain with lifting and tenderness along the musculature. Dr. Weng diagnosed right lateral epicondylitis and posterior interosseous neuropathy. Examination revealed intact sensation. Reflexes were two plus and symmetrical. Phalen's test was negative; Tinel's test was negative throughout the forearm and cubital tunnel. Range of motion (ROM) of the elbow was from 0 to 130 degrees. Pronation and supination were 70 degrees. The wrist had a 110 degree arc of motion. Dr. Weng found some tenderness diffusely on direct palpation on the extensor musculature and some tenderness along the lateral epicondyle. In response to the Office's question as to whether the accepted right elbow condition had resolved, Dr. Weng answered "Yes." In response to the question as to whether appellant had residuals of the accepted conditions, he also answered "Yes." Dr. Weng stated that there were no objective findings to correspond with appellant's subjective complaints. Recommendations for medical treatment included occasional use of anti-inflammatories, physical therapy and work aids, including a forearm band. In an accompanying work capacity evaluation, Dr. Weng indicated that appellant could work full time with restrictions, which included pushing and lifting no more than 30 pounds and pulling no more than 20 pounds.

On August 9, 2007 the Office proposed to terminate appellant's compensation and medical benefits. It determined that, based on Dr. Weng's second opinion report, appellant's injury-related disability had ceased and that she had no residuals due to her accepted injury. Appellant was afforded 30 days within which to submit any additional evidence.

In an August 30, 2007 letter, appellant's representative disagreed with the Office's proposed termination. He contended that Dr. Weng's recommended restrictions and prescribed treatment were inconsistent with his opinion that appellant's accepted conditions had resolved. Counsel also requested a referee examination to resolve an alleged conflict between Dr. Weng and appellant's treating physician.

By decision dated November 6, 2007, the Office finalized the termination of appellant's compensation and medical benefits effective that date. It found that the weight of the evidence rested with the opinion of Dr. Weng, which established that appellant was not disabled and that she had no residuals from her accepted conditions.

On December 6, 2007 appellant, through her representative, requested an oral hearing. At the June 17, 2008 hearing, the representative contended that Dr. Weng's report was contradictory, noting that he stated on the one hand, that appellant's condition had resolved, but on the other, that she had residuals of the accepted conditions. He also argued that Dr. Weng's recommendations for restrictions and treatment were inconsistent with his opinion that appellant's accepted conditions had resolved.

The record contains a June 24, 2008 report of an MRI scan of the right elbow and forearm. The report reflects impressions of lateral epicondylitis or common extensor tendinitis; postoperative changes to the proximal radius, normal ulnar nerve and normal right forearm.

Appellant submitted a June 30, 2008 report from Dr. LaTrecia M. Herring, a Board-certified internist, who stated that she continued to experience decreased sensation to the forearm and fingers, as well as chronic pain in the right elbow causally related to her accepted conditions.

On July 24, 2008 Dr. Campbell submitted responses to questions posed by the Office. He indicated agreement with Dr. Weng's opinion that appellant's accepted condition had resolved and that no further treatment was required.

By decision dated October 1, 2008, the Office hearing representative affirmed the November 6, 2007 decision. She found that Dr. Weng's April 30, 2007 report constituted the weight of the medical evidence and established that appellant had no disability or residuals of her accepted conditions as of November 6, 2007. The Office hearing representative found, however, that the case was not in posture for a decision as to whether appellant had continuing residuals after November 6, 2007 and remanded the case for further development of the medical evidence.

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.<sup>2</sup> After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>3</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>4</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>5</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>6</sup>

### **ANALYSIS**

The Office found that the weight of the medical evidence which was represented by Dr. Weng's April 30, 2007 report established that appellant had no further disability and no residuals related to her accepted elbow conditions. The Board finds that the medical evidence of

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<sup>2</sup> *A.W.*, 59 ECAB \_\_\_ (Docket No. 08-306, issued July 1, 2008).

<sup>3</sup> *J.M.*, 58 ECAB \_\_\_ (Docket No. 06-661, issued April 25, 2007).

<sup>4</sup> *See Del K. Rykert*, 40 ECAB 284 (1988).

<sup>5</sup> *T.P.*, 58 ECAB \_\_\_ (Docket No. 07-60, issued May 10, 2007).

<sup>6</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

record establishes that appellant was no longer disabled. However, the Board finds that the medical evidence is insufficient to establish that appellant no longer had residuals of her employment-related condition as of November 6, 2007, which requires further medical treatment.<sup>7</sup> Therefore, the Office met its burden of proof to terminate appellant's compensation benefits effective November 6, 2007 but failed to meet its burden of proof to terminate her medical benefits.

The medical evidence of record uniformly supports appellant's ability to perform the duties of her regular job. In his April 30, 2007 report, Dr. Weng reviewed appellant's history of injury and treatment. He related appellant's complaints of constant pain with lifting and tenderness along the musculature and diagnosed right lateral epicondylitis and posterior interosseous neuropathy. Dr. Weng provided detailed examination findings, which were essentially normal but for some diffuse tenderness on direct palpation on the extensor musculature and some tenderness along the lateral epicondyle. Based on his review of the record and examination of appellant, he opined that she was capable of working full time with restrictions, which included pushing and lifting no more than 30 pounds and pulling no more than 20 pounds.

Appellant's treating physicians also opined that she was able to work full time in her position as a letter carrier. On October 3, 2006 Dr. Campbell opined that appellant could return to work without restrictions. On December 29, 2006 after reviewing the results of a December 6, 2006 functional capacity evaluation reflecting no objective data establishing that appellant was incapable of performing her date-of-injury position, he again opined that she was capable of performing her regular job without restrictions.

On April 10, 2007 Dr. Chou stated that appellant had persistent, diffuse elbow and forearm discomfort following two separate elbow procedures related to treatment of lateral epicondylitis and radial tunnel syndrome. However, he did not provide an opinion as to whether appellant was disabled from employment. Therefore, the report is of limited probative value.

The Board finds that the weight of the medical evidence establishes that appellant's disability had ceased as of November 6, 2007. In fact, there is no probative medical evidence of record which supports appellant's disability as of that date. Therefore, the Board finds that the Office properly terminated appellant's compensation benefits.

The Board finds, on the other hand, that the evidence does not establish that appellant's accepted conditions had fully resolved by November 6, 2006. As noted above, the Office found that the weight of the medical evidence was represented by Dr. Weng's April 30, 2007 report. However, Dr. Weng's report is internally inconsistent and insufficient to establish that appellant no longer had residuals of her accepted conditions. On the one hand, he stated that appellant's accepted right elbow conditions had resolved. On the other hand, Dr. Weng indicated that appellant still had residuals of her accepted conditions. He stated that there were no objective findings to support appellant's subjective complaints; however, he recommended restrictions and further treatment, which included medication, physical therapy and an arm brace. Dr. Weng was instructed to obtain diagnostic testing, such as MRI scan and EMG, to determine whether

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<sup>7</sup> *Supra* note 6.

appellant had residuals of her accepted condition. But there is no evidence of record that he prescribed any testing which might have clarified appellant's condition. In fact, the most recent report reviewed was a March 21, 2003 EMG scan report.<sup>8</sup> Dr. Weng's failure to obtain current diagnostic evidence of appellant's elbow condition reduces the probative value of his report. The Board notes that the Office did not ask Dr. Weng to supplement his report, but rather merely accepted his statement that there was no objective evidence supporting residuals.

The remaining medical evidence received by the Office prior to its November 6, 2007 decision is insufficient to meet the Office's burden of proof. Rather, the evidence supports that appellant had residuals of her accepted condition. Dr. Campbell consistently reported appellant's complaints of pain and swelling in the elbow region. On April 10, 2007 Dr. Chou reported persistent elbow and forearm discomfort following appellant's two approved surgical procedures.

The Board finds that the Office improperly terminated medical benefits for the accepted conditions. In order to terminate authorization for medical treatment, it must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.<sup>9</sup> For reasons stated above, the medical evidence of record is insufficient to show that appellant no longer had residuals of her accepted conditions as of November 6, 2007, but instead suggests that she required further medical treatment. The Office thus, improperly terminated authorization for medical treatment for appellant's accepted conditions.

### CONCLUSION

The Board finds that the Office properly terminated appellant's wage-loss benefits, effective November 6, 2007. The Board further finds that the Office improperly terminated appellant's medical benefits effective November 6, 2007.

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<sup>8</sup> The Board notes that the June 24, 2008 report of an MRI scan of the right elbow and forearm reflects impressions of lateral epicondylitis or common extensor tendinitis, postoperative changes to the proximal radius, normal ulnar nerve and normal right forearm. However, this report is not relevant to appellant's condition on November 6, 2007, the date the Office terminated her medical benefits.

<sup>9</sup> *Pamela K. Guesford*, 53 ECAB 727 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 1, 2008 decision of the Office of Workers' Compensation Programs' hearing representative is affirmed in part and reversed in part.

Issued: September 16, 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