



February 11, 2008 when her treating physician, Dr. Phillip Omohundro, a Board-certified orthopedic surgeon, returned her to part-time, light duty.<sup>1</sup> Dr. Omohundro released her to regular duty on March 12, 2008 but noted that she had not reached maximum medical improvement. Appellant returned to full-time, regular duty that day.

In treatment notes dated April 7 through July 16, 2008, Dr. Omohundro described continuing treatment for appellant's October 2, 2007 employment injuries. He reported her complaint of pain to her left shoulder, right rib cage and back. Physical examination revealed tenderness of the left shoulder, right flank and ribs, as well as of the thoracic and lumbar spine. Range of motion was limited in the thoracic and lumbar spines. Dr. Omohundro diagnosed contusion of the shoulder, rotator cuff syndrome, closed fracture of three ribs and lumbar, thoracic and neck sprains. He performed several steroid shoulder injections and referred appellant to physical therapy. On July 16, 2008 Dr. Omohundro ordered a cervical magnetic resonance imaging (MRI) scan and computed tomography (CT) scan of appellant's chest.

By decision dated July 22, 2008, the Office terminated appellant's medical and wage-loss benefits effective that date finding that the March 10, 2008 medical report from Dr. Omohundro established that she no longer had any residuals or disability due to her accepted conditions.

On March 27, 2009 appellant filed a request for reconsideration. In a March 24, 2009 letter, she stated that, after returning to work in March 2008, she continued to see a physician for severe pain in her shoulders and ribs. Appellant claimed that her pain continued to worsen and that her physician told her that the blunt trauma of the employment injury caused neuropathy. In August 2008, she spent eight days in the hospital with severe pain and a high fever. When appellant returned to work on August 19, 2008, she found that she was unable to perform her previous employment duties.<sup>2</sup>

By decision dated May 15, 2009, the Office denied modification of the July 22, 2008 termination of benefits. It found that appellant did not submit sufficient medical evidence to show that she continued to experience any residuals or disability due to her employment-related injury.

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

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>3</sup> It may not terminate compensation without establishing

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<sup>1</sup> Appellant received continuation of pay from October 3 through November 16, 2007. She filed a claim for sick leave buyback, which the Office paid for the period November 19, 2007 through March 19, 2008.

<sup>2</sup> In a March 9, 2009 decision, the Office accepted appellant's claim for to include rotator cuff syndrome. In separate March 9, 2009 correspondence, it advised appellant that it had accepted her case for continuing medical care and that she was not required to file a recurrence of disability. In a March 10, 2009 letter, the Office rescinded the March 9, 2009 decision and correspondence, stating that it was sent in error and that the evidence of record established that she no longer experienced any residual or disability due to the employment injury.

<sup>3</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

that disability ceased or that it was no longer related to the employment.<sup>4</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>5</sup>

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

The Office accepted that appellant sustained a closed fracture of three ribs, contusion of the left arm and shoulder and lumbar, thoracic and neck sprains due to the October 2, 2007 employment injury. Appellant was out of work from October 2, 2007 through February 11, 2008, when she returned to light duty. She returned to regular duty on March 12, 2008. The issue is whether the Office properly terminated appellant's benefits effective July 22, 2008 on the grounds that she no longer continued to experience any disability or residuals due to her employment-related injury. The Board finds that the Office did not meet its burden of proof.

Although the Office terminated both wage-loss and medical benefits on July 22, 2008, appellant had returned to regular, full duty on March 12, 2008. Appellant was not on the periodic rolls after her return to work date or receiving any wage-loss compensation. As appellant was not receiving any wage-loss benefits, the July 22, 2008 decision effectively terminated only appellant's medical benefits.<sup>6</sup>

The Board finds that the Office improperly terminated appellant's medical benefits effective July 22, 2008. There is insufficient medical evidence of record to establish that appellant's employment-related condition resolved as of July 22, 2008. Rather, her treating physician, Dr. Omohundro, submitted treatment notes for employment-related conditions. He listed appellant's complaints of pain, tenderness on examination and limited range of motion all due to her October 2, 2007 employment injuries. Although Dr. Omohundro stated that appellant could return to full duty on March 12, 2008, he never found that her accepted conditions had resolved. The right to medical benefits for an accepted condition is not limited to the period of entitlement to monetary 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>7</sup> The medical evidence does not show that appellant ceased to have residuals of her employment-related conditions or that she no

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<sup>4</sup> *J.M.*, 58 ECAB 478 (2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>5</sup> *T.P.*, 58 ECAB 524 (2007); *Larry Warner*, 43 ECAB 1027 (1992).

<sup>6</sup> The Board notes that appellant filed a claim for an August 6, 2008 recurrence of disability. On February 12, 2009 appellant filed a claim for compensation for the period August 22 through November 9, 2008. The Office has not issued a final decision regarding the claimed recurrence. Thus, the Board does not have jurisdiction over the merits of this issue pursuant to 20 C.F.R. § 501.2(c).

<sup>7</sup> *T.P.*, *supra* note 5; *Furman G. Peake*, 41 ECAB 361, 364 (1990).

longer required medical treatment.<sup>8</sup> Consequently, the Board finds that the Office did not meet its burden of proof in terminating appellant's medical benefits.<sup>9</sup>

**CONCLUSION**

The Board finds that the Office did not meet its burden of proof in terminating appellant's medical benefits effective July 22, 2008. Due to the disposition of the first issue, the second issue is moot.<sup>10</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 15, 2009 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 23, 2010  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>8</sup> The Board further notes that the Office did not follow its procedures in terminating benefits as it did not provide appellant notice of the termination and an opportunity to respond before the termination of benefits became effective. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6(b) (March 1997); *Marsha K. Stanowski*, 48 ECAB 607 (1997).

<sup>9</sup> See *Kenneth R. Burrow*, 55 ECAB 157 (2003).

<sup>10</sup> See *id.*