

FACTUAL HISTORY

This is the second appeal before the Board. In a November 7, 2007 decision, the Board affirmed the Office's February 1, 2007 decision suspending appellant's compensation benefits for failure to attend a second opinion medical examination without good cause.¹

On September 20, 2005 appellant, then a 48-year-old program support assistant, slipped on a wet floor in the employing establishment bathroom, injuring his back, right side and shoulder. The Office accepted his claim for lumbar strain; cervical strain; bilateral elbow contusions; right hip contusion; and cervical spinal stenosis.² Appellant was placed on the periodic rolls.

Appellant submitted an April 6, 2006 report from his treating physician, Dr. Damien A. Doute, a Board-certified orthopedic surgeon, who stated that, although appellant's September 20, 2005 employment injury did not necessarily cause his cervical stenosis condition, it worsened the neurological condition that caused the stenosis. Dr. Doute explained that cervical stenosis is an exacerbation of disc protrusions of arthritis.

On July 6, 2006 Dr. Doute diagnosed cervical myelopathy and spinal stenosis with compression at C3-7 and severe lumbar degenerative disc disease at L5-S1, with herniated disc extrusion at L4-S1. Examination revealed positive Hoffman, with toes downgoing and decreased sensation in the right forearm, left index finger and thumb. Appellant was unable to walk on his heels and toes. Dr. Doute recommended cervical decompression and laminectomy or laminoplasty with instrumentation, but reported that appellant was afraid to undergo the surgery. He informed appellant that, without the surgery, he could worsen progressively to becoming paralyzed, but that there are no guarantees with surgery and surgery could make people worse. On July 20, 2006 Dr. Doute stated that appellant's condition was essentially unchanged. In an August 11, 2006 work capacity evaluation, he stated that appellant was unable to work and required surgery.

The Office referred appellant to Dr. Harold H. Alexander, a Board-certified orthopedic surgeon, for an examination and an opinion as to whether he had continuing residuals from his accepted injury and, if so, the degree of his disability.³ In an April 2, 2007 report, Dr. Alexander stated that it was difficult to distinguish between objective and subjective findings on examination because appellant was uncooperative and did not make maximum effort to perform the requested functions. Appellant was able to perform a straight leg raise to 90 degrees. He experienced severe pain on side-to-side pelvic compression, as well as in light touch to the cervical and lumbosacral spine. There were no signs of atrophy. Appellant would not move his neck more than a few millimeters in flexion, extension, side bending or rotation. Dr. Alexander indicated that, according to history, appellant had severe acquired spinal stenosis, which was

¹ Docket No. 071615 (issued November 7, 2007).

² Appellant had a preexisting cervical spinal stenosis condition. On May 9, 2006 the Office authorized surgery for cervical decompression at C3-7. However, appellant did not undergo the approved surgery.

³ On February 1, 2007 the Office suspended appellant's compensation for his failure to appear at the scheduled examination. It subsequently rescheduled the second opinion examination, which occurred on April 2, 2007.

aggravated by the 2005 injury and noted that there was no radiological evidence of lumbar radiculopathy. He opined that appellant continued “to have symptoms of neck pain related to aggravation of his spinal stenosis by his injury.” Dr. Alexander stated, however, that appellant’s subjective complaints far outweighed the objective findings and it was extremely difficult to examine him on an objective basis.

In an April 25, 2007 report, Dr. Doute diagnosed cervical stenosis and myelopathy with degenerative disc disease and lumbar degenerative disc disease with radiculopathy. Examination revealed positive clonus in the left, greater than the right foot; up going toes; positive Babinsky and Hoffman. Appellant demonstrated a wide-based gait and was unsteady. Strength was 5/5 C2-T1, L1-S1 and all dermatomes. Appellant had decreased sensation in the right forearm, left index finger and thumb and slightly decreased motor function. Dr. Doute stated that appellant refused the recommended surgery and had come in essentially for pain medicines.

The Office referred appellant for another second opinion examination, which was performed on August 28, 2008 by Dr. Alexander Doman, a Board-certified orthopedic surgeon, who reviewed the statement of accepted facts and the medical evidence of record. Dr. Doman provided an accurate history of the employment injury, reflecting that, on September 20, 2005, appellant slipped on a wet floor as he was entering a bathroom and fell on his right side. He noted that, prior to the 2005 injury, appellant suffered from longstanding back pain and severe cervical spinal stenosis, which included both congenital and acquired cervical stenosis, as well as cord compression at C3-7.

Dr. Doman stated that appellant had recently been diagnosed with Huntington’s Chorea, which is a severe, progressive, irreversible neurological disorder, which would preclude him from engaging in normal work activities. Appellant also suffered from depression, which developed following the diagnosed condition of Huntington’s Chorea. Dr. Doman noted that neither condition was in any way related to the accepted injury.

Examination of the cervical spine showed significant decreased range of motion with only 10 degrees of extension. Forward flexion of the lumbar spine was limited to 20 degrees. Rotation to the left and right was only 20 degrees and side bending was about 15 degrees bilaterally. Deep tendon reflexes in the upper and lower extremities appeared intact. There were no significant signs of muscular atrophy or wasting in the upper or lower extremities. Appellant had a negative straight leg raising test in the sitting position. X-rays of the lumbar spine showed advanced degenerative disc disease at L5-S1 with disc space narrowing. X-rays of the cervical spine showed severe diffuse cervical spondylosis from C3-7. Dr. Doman diagnosed lumbar spondylosis with degenerative disc disease; cervical spondylosis; severe cervical spinal stenosis; and diffuses cervical spinal stenosis C3-7 with spinal cord compression. He stated that the lumbar spondylosis with degenerative disc disease and cervical spondylosis represented the natural history of an underlying degenerative disorder superimposed on congenital abnormalities of the cervical spine and were not causally related to the September 20, 2005 injury.

Dr. Doman opined that appellant had no current objective residuals that were directly or indirectly attributable to his work injury. He concluded that any temporary aggravation of appellant’s cervical and lumbar back condition would have resolved within three months of his injury and that the contusion of his right hip and elbows had also long ago resolved. Dr. Doman

opined that, with respect to the accepted injury, appellant had no work restrictions and required no further treatment.

On April 22, 2009 the Office notified appellant of its intention to terminate his medical and wage-loss compensation benefits based on Dr. Doman's August 28, 2008 report. It instructed him to submit any evidence or argument within 30 days if he disagreed with the proposed termination.

In an undated letter, appellant informed the Office that he intended to appeal its decision to terminate his benefits. He contended that his surgery had been delayed and that the decision to terminate benefits should not be based on a brief examination by Dr. Doman.

On May 22, 2009 the Office informed appellant that the April 22, 2009 notice was not a final termination decision and that therefore, there was nothing for him to appeal at that time.

By decision dated May 28, 2009, the Office terminated appellant's wage-loss compensation and medical benefits on the grounds that the evidence established that his accepted conditions had resolved.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

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.⁷

ANALYSIS

The Board finds that the Office met its burden of proof to terminate appellant's wage-loss compensation and medical benefits on the grounds that he no longer had residuals of his accepted employment injury.

The latest report, dated April 25, 2007, from appellant's treating physician, Dr. Doute, provided a diagnosis of cervical stenosis and myelopathy with degenerative disc disease and

⁴ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

⁵ *J.M.*, 58 ECAB 478 (2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁶ *T.P.*, 58 ECAB 524 (2007); *Larry Warner*, 43 ECAB 1027 (1992).

⁷ *Id.* *Furman G. Peake*, 41 ECAB 361, 364 (1990).

lumbar degenerative disc disease with radiculopathy. While Dr. Doute provided examination findings reflecting back pain and leg weakness, he did not opine that appellant's condition was causally related to the accepted injury. The record is clear that appellant had severe cervical stenosis prior to his accepted injury. Therefore, it was necessary for Dr. Doute to explain how appellant's diagnosed condition was due to the September 20, 2005 employment injury, rather than to his preexisting condition. The Board notes that Dr. Doute's report is dated more than two years prior to the Office's decision terminating benefits. Therefore, it is of limited probative value as to appellant's medical condition on that date.

In contrast, Dr. Doman provided a documented and reasoned opinion attributing appellant's current cervical and lumbar conditions to the natural progression of an underlying degenerative disorder superimposed on congenital abnormalities of the cervical spine, rather than to the September 20, 2005 injury. He reviewed various diagnostic and imaging studies and conducted his own physical examination on August 28, 2008. Based upon Dr. Doman's examination and review of the record, he found that appellant had no current objective residuals that were attributable to his accepted work injury. He concluded that any temporary aggravation of appellant's cervical and lumbar back condition resolved within three months of his injury and that the contusion of his right hip and elbows had also long ago resolved. Dr. Doman opined that, with respect to the accepted injury, appellant had no work restrictions and required no further treatment.⁸

The Board finds that Dr. Doman's medical report is comprehensive, well rationalized and based on an accurate factual and medical history.⁹ There is no other contemporaneous medical evidence establishing that appellant remained disabled or continued to experience residuals of his employment-related injury. Dr. Doman's medical opinion constitutes the weight of the medical evidence.¹⁰

The Board finds that Dr. Doman's August 28, 2008 report established that appellant no longer has residuals from his September 20, 2005 employment injury. Accordingly, the Office properly terminated appellant's wage-loss compensation and medical benefits based on his opinion.¹¹

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation and medical benefits effective June 7, 2009.

⁸ Dr. Doman stated that symptoms associated with appellant's condition of Huntington's Chorea would preclude him from engaging in normal work activities. However, he opined that this genetic condition was in no way related to the accepted employment injury.

⁹ See *K.E.*, 60 ECAB ___ (Docket No. 08-1461, issued December 17, 2008).

¹⁰ See *E.J.*, 59 ECAB ___ (Docket No. 08-1350, issued September 8, 2008).

¹¹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 28, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 2010
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