

employment-related injury on December 26, 1996, which OWCP accepted for aggravation of cervical strain. The case files for the March 18 and December 26, 1996 injuries were combined, with the March 18, 1996 employment claim designated as the master file. OWCP subsequently accepted temporary aggravation of fibromyalgia.² Effective January 26, 2001, it terminated compensation and medical benefits with respect to all accepted conditions other than cervical strain.³

For several years appellant worked in a limited-duty capacity as a consequence of her employment injuries;⁴ but the employing establishment withdrew her limited-duty assignment effective March 4, 2006. Because her employing establishment was no longer able to accommodate her work restrictions, OWCP placed her on the periodic compensation rolls. For approximately three years appellant received wage-loss compensation for temporary total disability.

On November 5, 2009 OWCP issued a notice of proposed termination of benefits. It proposed to terminate appellant's compensation and medical benefits based on the opinion of Dr. Thomas J. Sabourin, a Board-certified orthopedic surgeon and OWCP referral physician, who examined appellant on August 10, 2009. Appellant's chief complaint at the time was pain in the cervical spine and right shoulder.⁵ Dr. Sabourin diagnosed degenerative disc disease of the cervical spine (C5-6, C6-7) and status post right shoulder arthroscopy for impingement syndrome.⁶ He advised that appellant's right shoulder condition was permanent and stationary with very little in the way of symptomatology or objective findings. Appellant's cervical spine was much more symptomatic, but from an overall orthopedic viewpoint she had relatively mild problems. As to the cause of her ongoing cervical complaints, Dr. Sabourin had difficulty distinguishing the pain associated with her degenerative disc disease and the pain associated with her chronic cervical strain.⁷ Because of his inability to differentiate between the two, Dr. Sabourin did not believe appellant's employment-related condition had resolved. He

² OWCP found that the employment-related temporary aggravation ceased as of March 18, 1997.

³ By decision dated November 14, 2001, the Branch of Hearings and Review affirmed OWCP's January 26, 2001 termination of benefits. Appellant did not appeal OWCP's hearing representative's November 14, 2001 merit decision.

⁴ Appellant also has an accepted claim for a right shoulder injury that occurred on or about July 31, 2002 (File No. xxxxxx366).

⁵ Appellant advised Dr. Sabourin that she first experienced neck pain in the 1980's when she was on some type of entertainment ride and was tossed about. She sought medical treatment at the time and her condition improved prior to her March 18, 1996 employment injury.

⁶ Based on a review of appellant's medical records, Dr. Sabourin noted that she had significant psychological problems and was reportedly disabled from a psychological standpoint. He did not offer his personal opinion regarding appellant's psychological condition other than to note that during his examination she demonstrated a pleasant personality without significant anxiety or overt psychological manifestations.

⁷ Dr. Sabourin questioned whether the diagnosis of "chronic" cervical strain included in the statement of accepted facts (SOAF) was the appropriate diagnosis. He explained that a cervical strain would normally be expected to resolve within six months. Whereas with the accepted "chronic" cervical strain, appellant might well be expected to have pain the remainder of her life. The latter condition Dr. Sabourin associated with a pain syndrome.

provided work restrictions with respect to both cervical and right shoulder conditions, which included a six-hour limitation on reaching with the right shoulder and a two-hour limitation reaching above shoulder level. Dr. Sabourin also imposed a six-hour limitation with respect to pushing, pulling, lifting, squatting, kneeling and climbing, as well as corresponding weight restrictions (10 to 20 pounds). Upon reviewing his August 10, 2009 report, OWCP sought clarification from Dr. Sabourin.

In a supplemental report dated October 23, 2009, Dr. Sabourin stated that he disagreed with the SOAF, which indicated that appellant's problem was chronic cervical strain. In his opinion, appellant had preexisting degenerative disc disease that was nonwork related. Dr. Sabourin added that it was more likely than not that her cervical neck pain was related to her cervical degenerative disc disease (C5-6, C6-7) and not a work-related condition. He further stated that the symptom of cervical pain was not indicative of a temporary or permanent aggravation, but merely a symptom of the underlying disease. Dr. Sabourin indicated that "chronic cervical strain" was not appellant's true diagnosis. He believed she initially sustained a cervical injury in the 1980's -- a so-called entertainment injury -- and over a period of time she developed a chronic mild degenerative disc disease of the cervical spine, which was confirmed by recent x-rays. Appellant's "pain syndrome" arose from her multilevel cervical degenerative disc disease, which according to Dr. Sabourin was a preexisting and chronically evolving process unrelated to her work injuries.

In a report dated December 23, 2009, appellant's treating physician, Dr. Kristi A. Dove, noted that she recently examined appellant and had reviewed Dr. Sabourin's October 23, 2009 report. She diagnosed degenerative disc disease of the cervical spine, pain disorder associated with both psychological features and a general medical condition and major depressive episode.⁸ Dr. Dove recommended that appellant resume cognitive behavioral therapy and functional restoration/physical therapy. She advised that appellant had been overwhelmed by recent medical/legal proceedings, which left her without any energy whatsoever. Appellant reportedly remained at home except when she had to attend medical appointments. Dr. Dove noted that appellant had been extremely depressed, asocial and anhedonic. As to appellant's right shoulder condition, she indicated that appellant was permanent and stationery. Dr. Dove did not specifically address appellant's cervical strain, other than noting that Dr. Sabourin imposed certain work restrictions. She indicated that appellant required further medical attention regarding her current psychiatric status as it related to her pain disorder associated with both psychological features and a general medical condition.

By decision dated January 21, 2010, OWCP terminated appellant's compensation and medical benefits based on Dr. Sabourin's opinion.

⁸ Dr. Dove is a Board-certified neurologist. She first examined appellant in August 2003 at which time she diagnosed post-traumatic myofascial pain syndrome, carpal tunnel syndrome (industrial), right shoulder impingement syndrome, right lateral epicondylitis and industrial aggravation of cervical degenerative joint disease. Dr. Dove attributed all of the diagnosed conditions to appellant's employment with the employing establishment, but not specifically to the March 18, 1996 employment injury. In 2006, she referred appellant to a psychologist, Dr. Lynne DeBoskey, who diagnosed major depressive disorder and pain disorder associated with both depression and physical injuries, secondary to a March 18, 1986 industrial-related injury. OWCP has not accepted an employment-related psychiatric condition.

Appellant requested a hearing, which was held on April 14, 2010. She submitted treatment notes and a March 5, 2010 narrative report from Dr. Dove, who diagnosed cervical discogenic syndrome with residual radiculopathy and stenosis, rotator cuff syndrome status post arthroscopy, lumbar radiculopathy and major depressive episode. Regarding appellant's cervical and lumbosacral spine, Dr. Dove advised that she was limited to performing semi-sedentary work that allowed for sitting half the time and standing or walking the other half. As to the amount of physical effort required, she indicated it should be minimal regardless of whether standing, walking or sitting. Dr. Dove also noted that appellant's condition precluded repetitive neck flexion. With respect to the cause of appellant's ongoing cervical and lumbar conditions, she apportioned 15 percent to a "hereditary propensity to degenerative pathology." Dr. Dove further stated that, absent the industrial exposure, 85 percent of the pathology appellant currently displayed would be nonexistent. Regarding appellant's depressive symptoms, she apportioned greater than 51 percent to her employment with the employing establishment. Dr. Dove recommended further medical treatment in the form of pain management and cognitive behavioral therapy.

In a decision dated June 28, 2010, OWCP's hearing representative affirmed the January 21, 2010 decision.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁹ Having determined that an employee has a disability causally related to her federal employment, it may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.¹⁰ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.¹¹ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition which require further medical treatment.¹²

ANALYSIS

Following the termination of appellant's benefits in 2001, the unresolved condition was her cervical strain. OWCP's January 26, 2001 termination of benefits is not an issue currently before the Board.¹³ It has not accepted any psychiatric or emotional condition -- depression and/or pain disorder -- as related to the accepted March 18, 1996 employment injury.

⁹ *Curtis Hall*, 45 ECAB 316 (1994).

¹⁰ *Jason C. Armstrong*, 40 ECAB 907 (1989).

¹¹ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

¹² *Calvin S. Mays*, 39 ECAB 993 (1988).

¹³ *See supra* note 3.

Appellant's treating physician, Dr. Dove, advised that appellant's ongoing orthopedic and psychological conditions are employment related. As to appellant's spine-related orthopedic conditions, OWCP found that her lumbosacral strain had resolved. Dr. Dove's most recent report included a diagnosis of lumbar radiculopathy, which she attributed to appellant's employment with the employing establishment; but Dr. Dove offered no explanation of how a lumbosacral strain that occurred some 15 years prior would presently manifest itself in the form of lumbar radiculopathy. The opinion is further diminished in probative value given the fact that when Dr. Dove initially examined appellant in August 2003, there were no subjective complaints, physical findings or a specific diagnosis relative to the lumbar spine. Dr. Dove treated appellant approximately three years before there was any mention of lumbar radiculopathy. She first diagnosed lumbar radiculopathy in July 2006, after appellant had already stopped working and there was no mention of this condition being employment related. Dr. Dove subsequently diagnosed lumbosacral neuritis "NOS." In July 2007, appellant advised Dr. Dove that weight gain had aggravated her low back pain. She reportedly had been unable to exercise and was having tremendous difficulty losing weight. Since July 2006 Dr. Dove has diagnosed lumbar radiculopathy or lumbar neuritis "NOS" without offering a clear explanation as to how this diagnosis is causally related to appellant's March 18, 1996 employment injury.

With respect to appellant's cervical condition, Dr. Dove's reports do not include a diagnosis of cervical strain. Instead, she diagnosed cervical discogenic syndrome with residual radiculopathy and stenosis. As noted, OWCP accepted cervical strain, not cervical degenerative disc disease or cervical discogenic syndrome. Dr. Dove apportioned 15 percent of appellant's current spine-related complaints to what she described as a "hereditary propensity to degenerative pathology." The other 85 percent she attributed to appellant's industrial exposure. However, Dr. Dove did not offer a salient explanation for the reason she was able to apportion appellant's current cervical complaints between her degenerative condition and her employment exposure. Accordingly, the Board finds that her opinion does not adequately establish a causal relationship between appellant's current cervical and lumbar complaints and her March 18, 1996 employment injury.¹⁴

In contrast, Dr. Sabourin provided a rationalized opinion in which he clearly explained that appellant's ongoing cervical complaints were causally related to her preexisting degenerative disc disease as opposed to her employment-related cervical strain, which would normally be expected to resolve within six months. In an October 23, 2009 report, he explained that her ongoing cervical pain was not indicative of an employment-related aggravation of her underlying degenerative condition, but merely a symptom of the underlying condition. Lastly, Dr. Sabourin noted that appellant's pain syndrome was unrelated to her employment injury, but was instead the result of her preexisting and chronically evolving multilevel cervical degenerative disc disease. The Board finds that OWCP properly relied on Dr. Sabourin's

¹⁴ Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

opinion as a basis for terminating compensation and medical benefits with respect to appellant's March 18, 1996 employment-related cervical strain.

As noted, OWCP did not accept a psychiatric or emotional condition -- depression and/or pain disorder -- as stemming from the accepted March 18, 1996 employment injury. Dr. Dove and Dr. DeBoskey both stated that appellant developed a psychiatric condition as a consequence of her March 18, 1996 employment injury. She first diagnosed major depressive episode/anxiety in December 2005. At that time, Dr. Dove noted that appellant had been under increased stress at work. Appellant felt she was being harassed because of her workers' compensation claims and because she was dating a carrier. A supervisor reportedly told her that management believed she was talking to her carrier-boyfriend when she should have been working. Dr. Dove's December 6, 2005 treatment notes also mentioned that appellant was expected to attend an official meeting regarding her use of a cell phone while driving. At the time, there was no indication that appellant's March 18, 1996 employment injury either caused or contributed to her diagnosed major depressive episode/anxiety.

On January 31, 2006 Dr. Dove first diagnosed pain disorder. A couple months later when the employing establishment withdrew appellant's limited-duty assignment, she found appellant totally disabled on both a psychological and physical basis. Appellant reportedly thought of committing suicide when she learned her limited-duty assignment was no longer available. Dr. Dove described appellant as distraught when she examined her on March 2, 2006. She then referred appellant to Dr. DeBoskey, who in a report dated July 10, 2006 diagnosed major depressive disorder and pain disorder secondary to a March 18, 1986 industrial-related injury.

In her two most recent narrative reports, Dr. Dove continued to diagnose pain disorder and major depressive episode. The December 23, 2009 report noted that appellant had been overwhelmed by recent medical/legal proceedings, which left her without any energy whatsoever. In a March 5, 2010 report, Dr. Dove stated that she believed that 51 percent of all causes of appellant's depressive symptoms were related to her employment. However, in this latest report, she did not specify what particular employment factors or incidents she believed were responsible for appellant's depression.

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.¹⁵ Since December 2005, Dr. Dove has repeatedly identified factors unrelated to the March 18, 1996 employment injury that either caused or contributed to appellant's diagnosed psychiatric conditions. Neither she nor Dr. DeBoskey have provided a clear explanation of how appellant's March 18, 1996 employment injury purportedly caused or contributed to her current psychiatric condition. Dr. Sabourin did not disagree with the psychiatric diagnoses, however, he found that appellant's "pain syndrome" arose from her multilevel cervical degenerative disc disease, which was a preexisting and chronically evolving process unrelated to her work injuries. Accordingly, the Board finds that the record does not establish that appellant's diagnosed major depressive episode and pain disorder are causally related to her March 18, 1996 employment injury.

¹⁵ *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

The Board further finds that the record demonstrates that appellant no longer suffers from residuals of her accepted March 18, 1996 employment injury. The weight of the medical evidence as represented by Dr. Sabourin's opinion establishes that appellant's employment-related cervical strain has resolved. As such, OWCP properly terminated entitlement to wage-loss compensation and medical benefits effective January 21, 2010.

CONCLUSION

The Board finds that OWCP met its burden to terminate compensation and medical benefits effective January 21, 2010.

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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