

duties. The Office accepted the claim for a cervical strain and subsequently included the conditions of spasmodic torticollis and precipitation of hysterical conversion. Appellant stopped work on May 16, 1988, returned after a few days, and stopped work completely on July 12, 1988. She was eventually placed on the Office's periodic rolls.

The record reflects that Dr. Edward C. Cooper, a general practitioner, took over appellant's medical care in September 1995 after appellant's previous treating physician, Dr. Jonathan Schleimer, relocated. However, Dr. Cooper did not provide a current report on appellant's condition despite the Office's February 9, 1998 request to do so. Accordingly, in order to determine appellant's current condition and to ascertain whether she still had residuals from her accepted conditions, the Office referred appellant together with the case record, a statement of accepted facts and a series of questions to Dr. William A. Anderson, a Board-certified psychiatrist, and Dr. Robert S. Ferretti, a Board-certified orthopedist, for a second opinion examination. In a March 7, 2001 report, Dr. Anderson advised that he saw appellant on February 28, 2001 and had reviewed the available medical records and the statement of accepted facts. He noted the history of appellant's illness and his findings on examination. Dr. Anderson opined, from a psychiatric point of view, that appellant was fully functional with no evidence of residuals of the accepted hysterical conversion disorder she sustained in 1988. He stated that he could not unequivocally diagnose a psychiatric disorder other than a mild, nondisabling mild depression (dysthymia). Dr. Anderson stated that it was documented that the factors of her employment had caused her physical condition, torticollis, which, in his opinion, appeared to be neurological in nature, and she became depressed severely. He noted that, although the depression had slowly improved to a relatively minor dysthymia, it was precipitated by her neurological illness but advised that there was no current psychiatric disability at this time. Although Dr. Anderson opined that appellant's illness unfolded in the context of work, he noted that appellant still suffered from the physical illness, which had developed while she was working for the government, and which currently limits her physical capability. He stated that it appeared that appellant's problem was more of a neurological basis and that it was his understanding that idiopathic tortion dystonia could take the form of torticollis, but noted that this was outside his expertise as a psychiatrist.

In a March 26, 2001 report, Dr. Ferretti noted the history of the injury, his review of the medical record and his examination findings. He advised that the diagnosis of cervical strain was established only by medical record history and opined that there was no objective evidence of residuals of cervical strain at this time, noting that the effect of a cervical strain injury would be transient, resolving in time. Dr. Ferretti further stated that there was no permanent or material change related to the effects of this injury. He noted, however, that there were subjective factors of neck pain and involuntary movements which, according to patient narrative history, developed subsequent to the cervical sprain injury. Based on medical probability, Dr. Ferretti stated that there should be no correlation on an organic basis, but noted that the Office had accepted the conditions of spastic torticollis and hysterical conversion on an industrial basis. He stated that the present objective findings consist of manifestations of the condition of spasmodic torticollis and hysterical conversion which, from an orthopedic standpoint, were unrelated to the effects of the accepted cervical sprain of April 4, 1988. Dr. Ferretti advised that the etiology for developing this condition was unknown and would not have a causation related to work activities of a mail clerk during which employment the cervical strain injury was recorded. He opined that

appellant had no limitations related to the cervical strain industrial injury, the effects of which should have resolved within six months from the date of injury. Dr. Ferretti opined that appellant “most likely had a work-related disability related to the spastic neck and psychiatric conditions” and advised that, although he did not think that appellant’s spastic torticollis and psychiatric conditions had an industrial causation, those conditions were causing disability and the exact limitations and restrictions should be determined by neurologists and/or psychiatrists who have expertise in evaluating those conditions.

On February 10, 2005 the Office issued a proposed notice of termination of compensation to appellant on the grounds that her employment-related conditions had resolved based on the reports of Dr. Ferretti and Dr. Anderson. The Office noted that a copy of Dr. Anderson’s report was sent to Dr. Matthew D. Troyer, a Board-certified neurologist and appellant’s treating physician, who had continued to submitted treatment notes with respect to appellant’s torticollis condition.¹

In response to the proposed notice of termination, the Office received a letter dated February 26, 2005 from appellant along with copies of medical reports from 1988 and 1989. In a February 23, 2005 report, Dr. Troyer advised that he saw appellant for ongoing treatment of torticollis and pain which, according to the history, began at her work several years ago in association with a strain and/or stiffness of the neck. He stated that, although torticollis was generally thought to be idiopathic, it was occasionally attributed to seemingly minor injuries. Dr. Troyer stated that there were no objective tests available to determine whether appellant’s injury was causative or coincidental, but noted that appellant gave a clear history of this neurological disorder beginning shortly after the injury.

By decision dated March 28, 2005, the Office terminated appellant’s compensation benefits, effective the same date, on the grounds that both second opinion physicians unequivocally stated that appellant’s current condition was not work related.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee’s benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.² The Office’s burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must

¹ The record indicates that Dr. Troyer took over appellant’s care after Dr. Cooper relocated.

² *Gloria J. Godfrey*, 52 ECAB 486 (2001).

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁴

ANALYSIS

The Office accepted the conditions of cervical strain, spasmodic torticollis and precipitation of hysterical conversion. It based its decision to terminate appellant's compensation on the opinions of Dr. Anderson and Dr. Ferretti, who performed second opinion examinations for the Office. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁵

In his March 7, 2001 report, Dr. Anderson, a Board-certified psychiatrist, diagnosed appellant with dysthymia, a mild depression, but stated that there was no current psychiatric disability at this time. He opined, from a psychiatric point of view, that appellant was fully functional with no evidence of residuals of the accepted hysterical conversion disorder she sustained in 1988. Dr. Anderson noted that appellant still suffered from torticollis and attributed the onset of her depression to her physical condition. Although he disagreed that appellant's torticollis was work related, he stated that it appeared that appellant's torticollis was more of a neurological diagnosis, which was outside his expertise as a psychiatrist.

In his March 26, 2001 report, Dr. Ferretti, a Board-certified orthopedic surgeon, stated that there was no objective evidence of residuals of cervical strain and that there was no permanent or material change related to the effects of this injury. He advised that there were objective findings of spasmodic torticollis and hysterical conversion and disagreed with the Office's acceptance of the conditions of spastic torticollis and hysterical conversion opining, from an orthopedic standpoint, that those conditions were unrelated to the effects of the accepted cervical sprain of April 4, 1988. Dr. Ferretti opined that appellant had no limitations related to the cervical strain industrial injury as the effects should have resolved within six months from the date of injury. He further opined that appellant most likely had a disability related to the spastic neck and psychiatric conditions but advised that the exact limitations and restrictions should be determined by neurologists and/or psychiatrists who have expertise in evaluating those conditions.

The Board finds that Dr. Ferretti's opinion unequivocally negated a causal relationship between appellant's current condition and her accepted cervical strain. He found that appellant's cervical strain should have resolved within six months from the date of injury. Thus, with respect to the termination of the accepted cervical strain, Dr. Ferretti's report is sufficiently probative, rationalized and based upon a proper factual background. There are no updated medical reports addressing or concerning appellant's current orthopedic condition. Accordingly, the Board finds that Dr. Ferretti's opinion constituted the weight of medical opinion and

⁴ *John F. Glynn*, 53 ECAB 562 (2002).

⁵ *See Anna C. Leanza*, 48 ECAB 115 (1996).

sufficient rationale to support the Office's decision to terminate appellant's compensation with respect to the accepted cervical strain.

With respect to the termination of the accepted spasmodic torticollis and hysterical conversion or psychological disorder, Dr. Troyer appears to indicate that appellant's torticollis was causally related to her employment based on her medical history. Although Dr. Anderson opined that appellant was fully functional from a psychiatric point of view, he appears to attribute appellant's psychiatric condition to the development of torticollis, which he found was more neurological in nature and outside his level of expertise. Dr. Ferretti opined that, although there were objective findings of spasmodic torticollis and hysterical conversion, appellant should be evaluated by a neurologist and/or psychiatrist who had expertise in evaluating such conditions. While both Dr. Ferretti and Dr. Anderson appeared to disagree with the Office's acceptance of appellant's physical illness of torticollis and subsequent psychiatric condition as being work related, the Board notes that both physicians felt that such conditions should be evaluated by a neurologist who had expertise in evaluating those conditions. As the Office began development of the medical evidence, regarding whether appellant's accepted conditions continued, it had the obligation to assure that a proper evaluation was performed.⁶ Because the referral physicians recommended appellant's evaluation by an appropriate neurologist, the Office acted prematurely in terminating appellant's compensation benefits for the accepted torticollis condition and her psychiatric condition without first referring appellant for the type of examination recommended by the referral physicians. The Office did not meet its burden of proof in terminating compensation with respect to the accepted torticollis condition or the hysterical conversion.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective March 28, 2005 with respect to the cervical strain only. The Office has failed to meet its burden of proof in terminating appellant's compensation benefits with respect to the accepted condition of torticollis and appellant's hysterical conversion.

⁶ See *Robert Kirby*, 51 ECAB 474 (2000). See also *Mae Z. Hackett*, 34 ECAB 1421 (1983) (where the Office referred appellant to a physician for an opinion on an issue, it has the responsibility to obtain an evaluation which will resolve the issue involved in the case).

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2005 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: December 19, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board