

right shoulder and neck lifting a heavy tray of mail. The Office accepted the claim for cervical strain, C5-6 herniated disc and C5-6 radiculitis. It authorized C5-6 anterior cervical discectomy and fusion which occurred on July 11, 2001. Appellant stopped work on January 26, 2002 and filed a recurrence of disability claim beginning on March 22, 2004. By decision dated May 25, 2004, the Office denied this claim. Following a June 10, 2005 hearing representative's decision, it referred appellant for a second opinion evaluation with Dr. Bruce D. Abrams, a Board-certified orthopedic surgeon. In a July 18, 2005 report, Dr. Abrams found that appellant was capable of light-duty work. The Office then provided Dr. Abrams with a surveillance videotape of appellant. Dr. Abrams completed a report on September 27, 2005 and stated that based on the surveillance tape appellant appeared capable of returning to full-time work with no restrictions of limitations. He stated, "In my opinion, the examinee is capable of performing her date-of-injury job as a mail processor in a full-time and unrestricted capacity based on my observations on the video as well as my examination." Dr. Abrams completed a supplemental report on December 8, 2005 and stated that appellant's previous complaints and findings on physical examination did not correspond with her activities on the tape where she demonstrated full range of motion and showed no evidence of pain. The Office hearing representative denied appellant's claim for recurrence of disability by decision dated September 12, 2006. The Board affirmed the Office's September 12, 2006 decision on May 2, 2007.¹ The facts and the circumstances of the case as set out in the Board's prior decisions are adopted herein by reference.

The Office issued a notice of proposed termination of compensation benefits only on January 18, 2007 relying on Dr. Abrams' reports. In response, appellant submitted a report dated February 2, 2007 from Dr. Luis Vega, a Board-certified family practitioner, diagnosing cervicalgia and cervical radiculopathy as well as myofascial upper back pain. Dr. Vega provided a form report with physical limitations. He stated that appellant had numbness in the upper extremities making it very difficult to operate machinery, and that she need to lie down twice a day due to cervical muscle spasms. By decision dated February 27, 2007, the Office terminated appellant's compensation benefits effective that date finding that Dr. Abrams' reports constituted the weight of the medical opinion evidence.

Appellant, through her attorney, requested an oral hearing on March 4, 2007. In a report dated April 23, 2007, Dr. Troy Sasse, an osteopath, diagnosed cervical radiculopathy and myofascial upper back pain. He provided work restrictions including lifting up to 20 pounds, no climbing, no kneeling, no twisting or reaching above the shoulder. Appellant testified at the oral hearing on June 4, 2007. She testified that there were a number of serious and substantial inconsistencies with the surveillance tape which Dr. Abrams relied upon. Appellant stated that she had no opportunity to refute the tape in front of Dr. Abrams. She admitted that she was carrying her 22-pound grandson, but denied that she was able to push and pull. Appellant stated that during the period that she was taped she had been informed that a tornado was approaching and was helping her husband take down the camper. She denied that she was swimming, stating that instead she was sitting in very shallow water. Appellant described reaching to hang a few towels and using a poker to unfurl a flag. She disputed the dates of the videotape.

¹ Docket No. 07-79 (issued May 2, 2007).

By decision dated August 14, 2007, the hearing representative affirmed the Office's February 27, 2007 decision terminating appellant's compensation benefits.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.³

The Board has held that, in certain circumstances, videotape evidence may be of value to a physician offering an opinion regarding a claimant's medical condition. It may reflect on the patient's reliability as a historian or on the actual ranges of motion, lifting or other physical activities the claimant may perform. However, a videotape may be incorrect or misleading to a physician if there are errors, such as the identity of the individual recorded on the videotape or whether certain activities were facilitated by the use of medication. The Office has the responsibility to make the claimant aware that it is providing videotape evidence to a medical expert. If the claimant requests a copy of the videotape, one should be made available and the employee given a reasonable opportunity to offer any comment or explanation regarding the accuracy of the recording.⁴

ANALYSIS -- ISSUE 1

The Office terminated appellant's compensation benefits effective February 27, 2007 based on the reports of Dr. Abrams, a Board-certified orthopedic surgeon and second opinion physician. Dr. Abrams viewed a surveillance videotape of appellant and completed a report on September 27, 2005 stating that based on the surveillance tape appellant appeared capable of returning to full-time work with no restrictions of limitations. He stated, "In my opinion, the examinee is capable of performing her date-of-injury job as a mail processor in a full-time and unrestricted capacity based on my observations on the video as well as my examination." Dr. Abrams completed a supplemental report on December 8, 2005 and stated that appellant's previous complaints and findings on physical examination did not correspond with her activities on the tape where she demonstrated full range of motion and showed no evidence of pain.

At the oral hearing, appellant disputed the accuracy of the videotape. She stated that the dates were incorrect and provided her own interpretation of her activities. However, there is no argument that the individual recorded was not appellant or any contention that the activities in which she was engaged were facilitated by the use of any medications. Moreover, the opinion of Dr. Abrams is clearly based on more than a review of the videotape. His medical report provided a thorough evaluation of appellant's factual and medical background and findings on physical examination. Dr. Abrams explained why the videotape reduced the credibility of her continuing complaints and restricted physical activity during his initial examination. The Board

² *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

³ *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

⁴ *J.M.*, 58 ECAB ____ (Docket No. 06-661, issued April 25, 2007).

finds that Dr. Abrams' reports are sufficient to meet the Office's burden of proof to terminate appellant's compensation benefits.

Appellant submitted a form report from Dr. Vega, a Board-certified family practitioner, dated February 2, 2007 diagnosing cervicalgia and cervical radiculopathy as well as myofascial upper back pain. Dr. Vega indicated appellant's physical limitations, but failed to provide detailed physical findings in support of his work restrictions. He stated that appellant had numbness in the upper extremities, making it very difficult to operate machinery, and that she needs to lie down twice a day due to cervical muscle spasms. However, Dr. Vega did not indicate that he had examined the videotape and did not explain how or why appellant's activities on this tape were consistent with his work restrictions. As Dr. Vega's report does have the necessary history and physical findings it is not sufficient to overcome the weight of Dr. Abrams' reports or to create a conflict with them.

LEGAL PRECEDENT -- ISSUE 2

Once the Office has met its burden of proof in terminating compensation benefits, the burden of proof shifts to appellant to establish that she remains entitled to compensation benefits after the date of termination. To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background to support such a causal relationship.⁵

ANALYSIS -- ISSUE 2

Following the Office's February 27, 2007 termination decision, appellant submitted a report dated April 23, 2007 from Dr. Sasse, an osteopath, diagnosing cervical radiculopathy and myofascial upper back pain. Dr. Sasse provided work restrictions including lifting up to 20 pounds, no climbing, no kneeling, no twisting or reaching above the shoulder. He did not provide a detailed factual background, physical findings or objective evidence that the videotape was not representative of appellant's physical activity level. Without rationalized medical opinion evidence addressing the causal relationship between appellant's current condition and her accepted employment injury, this report cannot establish appellant's continuing entitlement to disability compensation or create a conflict with the detailed and well-reasoned reports of Dr. Abrams.

CONCLUSION

The Board finds that the Office has met its burden of proof to terminate appellant's compensation benefits effective February 27, 2007. The Board further finds that appellant has not established entitlement to any continuing compensation benefits on or after February 27, 2007.

⁵ *Manuel Gill*, 52 ECAB 282, 287 (2001).

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board