



The Office referred appellant for a second opinion examination by Dr. Richard Watkins, an orthopedic surgeon. In a report dated September 19, 2003, Dr. Watkins provided a history and results on examination, noting that a December 5, 2001 magnetic resonance imaging (MRI) scan showed posterior bulging of the C5-6 disc. He diagnosed cervical strain and ruptured C5-6 disc. Dr. Watkins opined that appellant's current symptoms were not due to the work-related cervical strain but most likely due to the ruptured disc.

On October 27, 2005 appellant was seen for a second opinion examination by Dr. Alan Wilde, an orthopedic surgeon. In a report dated October 28, 2005, Dr. Wilde provided a history and results on examination. He reviewed the December 5, 2001 MRI scan results and noted that appellant had another motor vehicle accident in May 2002. Dr. Wilde diagnosed disc degeneration C5-6 as manifested by the MRI scan results, opining that "[t]his diagnosis is not related to the injury of [February 5, 2000] but is due to a natural progression." He stated that there were no objective findings on examination to indicate the cervical strain was still active and it had been over five years since the injury. Dr. Wilde concluded that appellant did not have any residuals from the February 5, 2000 employment injury.

In a report dated November 28, 2005, Dr. Timothy Davis, a chiropractor, opined that appellant's degenerative disc disease was a direct and proximal result of the cervical injury of February 5, 2000. By letter dated May 8, 2006, the Office issued a notice of proposed termination of medical benefits and entitlement to future compensation. It advised appellant that it found the weight of the evidence was represented by Dr. Wilde. If she disagreed with the proposed termination, she should submit evidence or argument within 30 days.

By decision dated June 9, 2006, the Office terminated appellant's compensation benefits related to the February 5, 2000 injury.

Appellant requested a hearing before an Office hearing representative, which was held on November 7, 2006. She indicated she had returned to full duty on June 21, 2006 after six years of light duty.

In a report dated June 6, 2006, Dr. Timothy Morley, an osteopath, provided results on examination and opined that appellant had a 10 percent arm impairment. By report dated July 26, 2006, Dr. Mark Hnilica, a neurosurgeon, provided a history and results on examination. According to Dr. Hnilica, the February 2000 incident resulted in a loss of consciousness and some bruising over the forehead. He stated that the MRI scan findings showed progression of C5-6 degenerative changes since 2001. Dr. Hnilica further stated:

"Given the fairly benign appearance of the films in 2000, at the time of her initial injury, I would believe that this progression of degeneration at this level is out of proportion to that which I would expect and is likely to have been caused or aggravated by the accident at that time. To further confound this, she has another accident in 2001, which may have contributed to this degenerative process."

By report dated October 19, 2006, Dr. Sarah Blake, an internist, diagnosed cervical degenerative disc disease, cervical radiculopathy and cervical spondylosis. She recommended cervical facet injections.

In a decision dated January 16, 2007, an Office hearing representative affirmed the June 9, 2006 decision. He found the weight of the evidence was represented by Dr. Wilde.

Appellant requested reconsideration by letter dated July 7, 2007. She argued that the report of Dr. Wilde was not sufficient to terminate benefits as he did not provide a rationalized medical opinion. In a report dated December 28, 2006, Dr. Gary Rea, an orthopedic surgeon, opined that appellant had a chronic cervical sprain. He indicated that an MRI scan showed degenerative disc and a herniated disc. Dr. Rea opined that appellant could work with a 20-pound lifting restriction and no carrying of a mailbag.

By decision dated October 1, 2007, the Office denied modification of the January 16, 2007 decision.

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. 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 appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>1</sup>

### **ANALYSIS**

The Office accepted that appellant sustained a cervical strain in the performance of duty on February 5, 2000. Appellant returned to full-time, light-duty work and was not receiving compensation for wage loss. The Office terminated entitlement to medical benefits effective June 9, 2006.<sup>2</sup> As noted, it has the burden of proof to terminate authorization for medical benefits for the accepted cervical strain.

The Board finds that Dr. Wilde, the second opinion examiner, provided a rationalized medical opinion on the issue presented in his October 28, 2005 report. Rationalized medical opinion evidence is medical evidence that is based on an accurate factual and medical background and contains medical rationale in support of the opinion.<sup>3</sup> Dr. Wilde provided a history and results on examination. He offered an unequivocal opinion that the cervical strain had resolved, noting the time period since the injury and the lack of any objective findings that the cervical strain was still active. Dr. Wilde noted that appellant did have underlying cervical degenerative disc disease, but found that this was not due to the accepted employment injury. His report represents probative medical evidence that the accepted condition had resolved.

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<sup>1</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>2</sup> Although the Office referred to future compensation for wage loss, the only issue before the Office was continuing entitlement to medical benefits, as appellant was not receiving compensation for wage loss nor was there a pending claim for wage-loss compensation.

<sup>3</sup> *See John W. Montoya*, 54 ECAB 306 (2003).

With respect to any ongoing cervical strain, Dr. Rea referred to a chronic cervical sprain and strain in his brief December 28, 2006 report, without providing further detail. He did not provide a rationalized medical opinion supporting a continuing employment-related cervical strain after June 9, 2006. The Board finds that the weight of the medical evidence was represented by Dr. Wilde and the Office met its burden of proof to terminate medical benefits effective June 9, 2006.

Appellant submitted the July 26, 2006 report from Dr. Hnilica, who opined there was causal relationship between the cervical degenerative disc disease and the employment injury. The Board notes that a degenerative cervical condition has not been accepted as employment related. It is appellant's burden of proof to establish causal relationship between the diagnosed condition and her employment.<sup>4</sup> With respect to the factual and medical background, it is not clear that Dr. Hnilica had an accurate background. He reported that appellant lost consciousness in the February 5, 2000 accident, but there is no medical evidence of record documenting such loss of consciousness. Dr. Hnilica also referred to "another accident in 2001," without further explanation. It appears this was a nonemployment-related incident, and it is not clear whether Dr. Hnilica was referring to the same accident that Dr. Wilde reported occurred in May 2002. With respect to medical rationale, Dr. Hnilica opined that the degenerative changes revealed in 2006 were "out of proportion" and therefore likely to have been "caused or aggravated" by the 2000 accident. He did not clearly explain how the degenerative changes in 2006 were related to the injury six years earlier, especially in view of his statement that a later accident may have contributed to the condition.

The Board finds that the report of Dr. Hnilica is not sufficient to establish a C5-6 degenerative condition as employment related. There is no other probative medical evidence of record establishing causal relationship between a cervical degenerative condition and the employment injury. Dr. Davis, the chiropractor, is not considered a physician under the Federal Employees' Compensation Act because he did not diagnose a subluxation as demonstrated by x-ray.<sup>5</sup> His report is not considered competent medical evidence on the issue of a degenerative disc condition. Appellant did not submit sufficient medical evidence to establish a degenerative cervical condition causally related to the February 5, 2000 employment injury.

### **CONCLUSION**

The Office met its burden of proof to terminate authorization for medical benefits effective June 9, 2006 based on the opinion from Dr. Wilde, the second opinion examiner. The evidence established the accepted cervical strain had resolved, and the evidence did not establish any additional employment-related conditions.

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<sup>4</sup> See *Robert Broome*, 55 ECAB 339 (2004).

<sup>5</sup> 5 U.S.C. § 8101(2) provides that the term "physician" ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist."

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 1 and January 16, 2007 are affirmed.

Issued: July 9, 2008  
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