

tunnel conditions. She first realized her condition on July 20, 1999. The Office accepted appellant's claim for intervertebral cervical disc disorder with myelopathy, cervical region and unspecified disorder of bursae and tenderness in the right shoulder region. It advised that the claimed carpal tunnel condition was not accepted as the medical reports of record failed to show any positive evidence of carpal tunnel syndrome.¹ Appellant received medical and compensation benefits for total disability from May 15 through October 30, 2005. On October 31, 2005 she returned to work on a limited-duty, full-time basis.

In an October 27, 2006 report, Dr. Carri A. Jones, a Board-certified physiatrist and treating physician, noted that appellant had bilateral hand dysesthesias, bilateral wrist pain, bilateral shoulder pain and neck pain. Dr. Wayne A. Eckhardt, a Board-certified orthopedic surgeon, whom appellant was seeing for shoulder pain, had advised that appellant had bilateral shoulder tendinitis and kept her off work. Dr. Jones reported that appellant's September 2, 2005 magnetic resonance imaging (MRI) scan of the right shoulder and arthrogram, as well as an MRI scan of the cervical spine, were normal. She provided an impression of upper extremity dysesthesias; mild right carpal tunnel syndrome, minimal left carpal tunnel syndrome, based on electrodiagnostic studies March 2005; questionable mild facet synovitis cervical spine and a questionable possible early finding of lupus or inflammatory process. Based on the negative results of the MRI scans for the right shoulder and cervical spine, Dr. Jones found no evidence of an ongoing orthopedic problem. She recommended that appellant see her primary care provider for further work-up for possible early findings of lupus or another global inflammatory process and that appellant continue treatment with Dr. Eckhardt for her bilateral shoulder tendinitis. In a November 1, 2005 letter, Dr. Jones advised that, given the normal findings on the MRI scan of the right shoulder with an arthrogram and MRI scan of the cervical spine, there was no orthopedic reason for appellant's continued pain to both upper extremities and neck. She noted that appellant should undergo consultation with a neurologist and/or rheumatologist for early findings of lupus and/or global inflammatory process.

In a November 15, 2005 report, Dr. Eckhardt noted that appellant continued to complain of pain in the right shoulder, but that the MRI scan of the shoulder showed nothing. He advised that electrical studies of the right arm also showed nothing in terms of nerve compression, problems from the cervical spine or the peripheral nerves. Dr. Eckhardt advised that he did not know what was going on with appellant's shoulder condition and agreed with the recommendation that appellant see either a rheumatologist or a neurologist. He noted that appellant continued to insist that her shoulder condition was related to her work.

By notice dated March 15, 2006, the Office proposed termination of appellant's wage-loss and medical benefits. The Office noted that both Dr. Jones and Dr. Eckhardt had examined her and could not identify objective medical evidence to support her subjective complaints of pain or identify any continuing residuals or disability in connection with the accepted claim. Therefore, it found that the weight of the medical evidence demonstrated that appellant no longer had any disability or residuals due to her accepted work-related condition.

¹ It further noted that appellant's other medical conditions of record were also not accepted.

In a March 22, 2006 letter, appellant disagreed with the Office's proposed termination of her compensation benefits. She argued that Drs. Jones and Eckhardt merely ruled out an orthopedic diagnosis but did not preclude that she might have a rheumatological or neurological condition. Appellant noted that her doctors continued to prescribe medications and that she had an appointment with a neurologist scheduled on April 24, 2006.

In a March 25, 2006 report, Dr. Louise A. Prince, Board-certified in emergency medicine, noted that appellant was seen in the emergency room for bilateral arm pain. She noted that appellant had a long-standing history of muscular skeletal pain with a negative work-up on repeat occasions and was not currently using any pain medication. Dr. Prince reported examination findings and indicated that appellant met approximately 98 percent of the diagnostic criteria for fibromyalgia, as well as multiple other chronic complaints associated with fibromyalgia. Appellant also admitted to some depression and anxiety in regard to her long-standing condition. Treatment options for her primary care physician were discussed.

By decision dated April 21, 2006, the Office terminated appellant's compensation benefits effective that date. The Office found that the weight of the medical evidence rested with the medical opinions of Dr. Jones and Dr. Eckhardt and established that appellant no longer had any disability or residuals of her injury-related medical conditions.

Appellant's request for reconsideration of the Office's decision was received by the Office on March 2, 2007. In a February 6, 2007 clinical neurophysiology report, Dr. Deborah Bradshaw, a Board-certified neurologist, evaluated appellant for carpal tunnel syndrome. She indicated that diagnostic study demonstrated mild bilateral median neuropathies at the wrist with slight worsening on the right since June 2006 and a slight worsening on the left since 2005. Dr. Bradshaw stated that the mild delayed ulnar distal latencies raised the possibility of a polyneuropathy and felt that a further investigation for a referral for study of the lower extremities may be helpful given appellant's family history of diabetes mellitus.

In a February 13, 2007 duty status report, Dr. Kristen M. Graves, a Board-certified internist, advised that appellant developed wrist pain at work. She diagnosed carpal tunnel syndrome and opined that it was causally related to appellant's work injury. Dr. Graves noted that appellant had other disabling conditions, such as fibromyalgia. She opined that appellant was not able to perform her regular duties as a nursing assistant as her wrist pain limits the ability to perform her usual activities.

By decision dated April 5, 2007, the Office denied appellant's reconsideration request finding that she did not provide relevant and pertinent evidence not previously considered by the Office.

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

² *Elaine Sneed*, 56 ECAB ____ (Docket No. 04-2039, issued March 7, 2005).

establishing that disability has ceased or that it is no longer related to the employment injury.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 establish that appellant no longer has residuals of an employment-related condition which would require further medical treatment.⁴

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for intervertebral cervical disc disorder with myelopathy, cervical region; and unspecified disorder of bursae and tenderness in the right shoulder region. The Office terminated compensation benefits on the basis that the weight of the medical evidence established that the work-related accepted conditions had resolved. The Office relied upon the evaluations of Dr. Jones and Dr. Eckhardt as the basis for concluding that the accepted conditions had resolved.

Dr. Jones, appellant's treating physician, found no orthopedic reason for appellant's continued pain to both upper extremities and neck as normal findings were indicated on the September 2, 2005 MRI scan of the right shoulder with arthrogram and the September 2, 2005 MRI scan of the cervical spine. Dr. Eckhardt, appellant's treating physician for her bilateral shoulder pain, advised that the MRI scan of the right shoulder and electrical studies of the right upper extremity were normal and not indicative of any problems. Both physicians indicated that appellant would benefit from a referral to either a rheumatologist or a neurologist to further investigate her complaints of pain.

The Board finds that the Office properly relied on the opinions of Dr. Jones and Dr. Eckhardt to terminate appellant's wage-loss and medical benefits for the accepted work-related conditions. The physicians established that appellant had no orthopedic or neurological abnormalities and, thus, no ongoing conditions associated with her accepted injuries of intervertebral cervical disc disorder with myelopathy, cervical region; and unspecified disorder of bursae and tenderness in the right shoulder region. The Board finds that the opinions of Dr. Jones and Dr. Eckhardt represent the weight of the medical opinion evidence as they had conducted physical examinations of appellant, reviewed a comprehensive medical history and analyzed objective evidence which presented normal findings. Because there was no objective evidence that appellant had any remaining disability or residuals from her accepted employment injuries, the Office properly terminated her compensation for wage-loss and medical benefits.

The Board also finds that Dr. Prince's opinion is insufficient to overcome the weight of or cause a conflict with the medical evidence. Dr. Prince noted that appellant had a long-standing history of muscular skeletal pain with negative work-ups on repeat occasions. She provided an assessment of fibromyalgia. The Board notes that the Office has not accepted fibromyalgia as related to the employment injury. Appellant has the burden of proof to establish

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

⁴ *James F. Weikel*, 54 ECAB 690 (2003).

causal relationship to her employment, which she has not met.⁵ In this regard, Dr. Prince did not provide any rationalized evidence that appellant's fibromyalgia condition was causally related to her accepted employment injuries or her work duties. Thus, her medical opinion is not sufficient to overcome the weight of the medical evidence.

Although appellant argued that she was still undergoing medical treatment for her neck and shoulder conditions as Dr. Jones and Dr. Eckhardt had prescribed medications for her and she had an appointment with a neurologist scheduled, her argument is irrelevant as the medical evidence of record indicates that her employment-related condition is no longer disabling and her continued pain may be the result of conditions other than her accepted employment-related conditions.⁶

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,⁷ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.⁸ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁹

ANALYSIS -- ISSUE 2

Appellant's request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant was not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).¹⁰

⁵ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury).

⁶ On appeal, appellant argues that she originally filed her claim for carpal tunnel syndrome and the Office never evaluated her EMG reports which showed she had carpal tunnel syndrome. The Board notes that, as the Office did not develop this aspect of appellant's claim, this issue is not properly before the Board. 20 C.F.R. § 501.2(c).

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ 20 C.F.R. § 10.608(b).

¹⁰ 20 C.F.R. § 10.606(b)(2)(i) and (ii).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted a November 6, 2007 report from Dr. Bradshaw, noting objective evidence of carpal tunnel syndrome, and a February 13, 2007 report from Dr. Graves, in which the physician opined that appellant's carpal tunnel condition was causally related to appellant's work as a nursing assistant. This medical evidence, while new, is not relevant to the issue of whether the Office properly terminated appellant's compensation benefits in the instant claim. Neither report discusses whether appellant has any disability or medical residuals from her accepted conditions of intervertebral cervical disc disorder with myelopathy, cervical region and/or unspecified disorder of bursae and tenderness in the right shoulder region. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹¹ Consequently, appellant is not entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(2).¹²

Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did she submit relevant and pertinent evidence not previously considered by the Office.¹³ Accordingly, the Board finds that the Office properly determined that appellant was not entitled to a merit review.¹⁴

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective April 21, 2006 on the grounds that she no longer had any disability causally related to her employment-related injury. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹¹ *Kevin M. Fatzner*, 51 ECAB 407 (2000). As the Office had not accepted as work-related any conditions other than the above accepted ones, appellant may file a new claim with the Office pertaining to her carpal tunnel condition. *See supra* note 6.

¹² 20 C.F.R. § 10.606(b)(2)(iii).

¹³ 20 C.F.R. § 10.606(b).

¹⁴ *See James E. Norris*, 52 ECAB 93 (2000).

ORDER

IT IS HEREBY ORDERED THAT the April 5, 2007 and April 21, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 16, 2007
Washington, DC

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

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

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