

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHARON T. EADDY and U.S. POSTAL SERVICE,  
POST OFFICE, Brooklyn, NY

*Docket No. 99-2185; Submitted on the Record;  
Issued August 16, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective May 7, 1998 on the grounds that her injury-related disability had ceased.

On October 29, 1996 appellant, then a 43-year-old letter carrier, sustained a right shoulder strain in the performance of duty.

By letter dated October 8, 1997, the Office referred appellant, along with a statement of accepted facts and copies of medical records, to Dr. Martin Manin, a Board-certified orthopedic surgeon and an Office referral physician, for an examination and an evaluation as to whether appellant had any remaining employment-related disability or medical condition.

In a report dated October 20, 1997, Dr. Manin provided a history of appellant's condition and detailed findings on examination. He stated that the x-rays of the cervical spine were normal. A magnetic resonance imaging (MRI) scan of the right shoulder was reported to be normal as were regular x-rays of the right shoulder. Dr. Manin stated the MRI of the cervical spine dated May 3, 1997 reported left-sided foraminal narrowing between C5-6 because of spondylosis. A tiny "protrusion was noted at C4-5 and C5-6" on the left side, but Dr. Manin noted that appellant's symptoms were all on the right side. He stated that there were no objective findings and opined that appellant could return to work without any restrictions.

In a supplemental report dated December 1, 1997, Dr. Manin diagnosed a sprain of the right shoulder. He stated that appellant had no history of any preceding injury and opined that the findings on the May 3, 1997 MRI were not the result of appellant's work injury as her symptoms are on the right side whereas the "protrusion" was on the left side. Dr. Manin noted that the electrodiagnostic reported study did not delineate, which extremities were tested and, which muscles were involved in order to comment on a diagnosis of cervical radiculopathy. He opined that appellant's spondylosis preceded the accident described and that the changes were

degenerative in nature and were not uncommon in a patient of appellant's age. Dr. Manin reasserted his opinion that appellant was capable of returning to her regular job.

Dr. De Lys St. Hill, appellant's attending physician and a specialist in preventative medicine, continued to opine that appellant had a herniated nucleus pulposus disc at C5-6 and cervical radiculitis and was unable to return to the date-of-injury job.

By letter dated January 22, 1998, due to the conflict in medical opinion between Dr. Manin and Dr. St. Hill, the Office referred appellant, along with a statement of accepted facts and copies of medical records, to Dr. Richard Stern, a Board-certified orthopedic surgeon and the impartial medical specialist, for an examination and evaluation as to whether appellant had any remaining disability or medical condition causally related to her October 29, 1996 employment injury.

In a report dated March 18, 1998, Dr. Stern provided a history of appellant's condition and findings on examination. He diagnosed a resolved strain of the right shoulder, which, if the history is correct, was causally related to the incident of October 29, 1996. Dr. Stern noted that there were no objective findings on examination. He stated that the findings noted on the May 3, 1997 MRI of the cervical spine were of no clinical significance as the "tiny" disc protrusions in the spine were a common occurrence in the absence of any injury in asymptomatic individuals. Dr. Stern, therefore, did not relate any of the "findings" on the cervical MRI of May 3, 1997 to the incident of October 29, 1996. He further stated that the electrodiagnostic studies performed by Dr. St. Hill on July 15, 1997 were extremely "mild" findings at best with increased insertional activity as Dr. St. Hill had noted. Again, Dr. Stern stated that this was possible to find in asymptomatic individuals and, in and of itself, was not related to the incident of October 29, 1996. Dr. Stern stated his opinion that appellant's subjective complaints were not substantiated by any objective findings and that there was no evidence of any causally-related disability. He stated that the "tests," which he commented on were in no way related to the incident of October 29, 1996. Dr. Stern opined that appellant could carry out the full activities of a letter carrier without restriction or limitation.

By letter dated April 7, 1998, the Office advised appellant that it proposed to terminate her compensation benefits. Appellant was given 30 days to submit additional relevant evidence and argument.

In a letter dated April 20, 1998, appellant expressed her disagreement with the examinations provided by Drs. Manin and Stern. An April 20, 1998 note from Dr. St. Hill reiterated his previously stated opinion.

By decision dated May 11, 1998, the Office terminated appellant's compensation benefits effective May 7, 1998 on the grounds that the weight of the medical evidence, as represented by the reports of Drs. Stern and Manin, established that appellant's injury-related disability had ceased.

By letter dated June 8, 1998, appellant requested an oral hearing, but later withdrew her request.

By letter dated March 22, 1999, appellant, through her attorney, requested reconsideration of the termination of her compensation. Arguments were advanced and additional evidence was submitted.

In an undated report, Dr. Aerie Rim, a Board-certified physiatrist, provided a history of appellant's condition and findings on examination as well as noting that the electromyography on July 1, 1997 by Dr. St. Hill revealed cervical radiculopathy. Dr. Rim diagnosed cervical radiculopathy on the right side and opined that appellant's symptoms were causally related to the October 29, 1995 work incident. In a November 9, 1998 report, he stated that, appellant had reached maximum medical improvement, but had a permanent chronic injury to her right cervical nerve roots due to her causally-related original injury of October 29, 1996, which is vulnerable to reinjury if restrictions are not followed. Dr. Rim opined that appellant was partially disabled, but should be able to work limited duty.

In an August 9, 1998 report, Dr. St. Hill provided a history of appellant's condition. He stated that appellant was last examined in June 1998 and had reached maximum medical improvement. Dr. St. Hill noted that the literature cites many instances where an individual will sustain a traction injury of the cervical nerve roots after a sudden pull or jerk on their arm, at their shoulders. He stated that the events leading to this injury (a slight built woman lifting a heavy bag of mail out of a box), the findings on physical examination and the findings on imaging studies and electrical nerve testing all collaborate to warrant a definitive diagnosis of right cervical radiculopathy. Dr. St. Hill stated that this was a chronic medical condition and that appellant revealed no prior injuries or events, which would explain the physical findings. Copies of the July 15, 1997 electroneurodiagnostic study, a nerve conduction study and a May 3, 1997 MRI of the cervical spine were provided.

In a prescription note pad dated April 20, 1998, from Dr. St. Hill, it was noted that appellant had cervical radiculopathy and that physical therapy should be continued.

An excerpt from the publication, "Federal Employees' Compensation Act Practice Guide" by Howard L. Graham, J.D., was also provided.

By decision dated April 23, 1999, the Office denied modification of the May 11, 1998 decision.<sup>1</sup>

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<sup>1</sup> The Board notes that the Office utilized the clear evidence of error standard in granting appellant's reconsideration request. However, this was a harmless error as the Office Properly reopened the case and conducted a merit review of the new evidence, which was timely submitted; *see* 20 C.F.R. § 10.608(a) (1990).

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective May 7, 1998 on the grounds that her injury-related disability had ceased.<sup>2</sup>

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.<sup>3</sup>

In this case, appellant sustained a right shoulder strain in the performance of duty on October 29, 1996. Dr. Manin, the Office referral physician, opined appellant's right shoulder strain had resolved, appellant's other conditions noted on a May 3, 1997 cervical MRI and July 15, 1997 electrodiagnostic studies were not causally related to the injury of October 29, 1996 and that appellant could return to her date-of-injury job without any restrictions. Dr. St. Hill opined that appellant had a herniated nucleus pulposus disc at C5-6 and cervical radiculitis and could not return to her date-of-injury job. Due to the conflict of medical opinion between Drs. Manin and St. Hill, the Office properly referred appellant to an impartial medical specialist. Section 8123(a) of the Act provides, in pertinent part, "if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."<sup>4</sup>

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such a specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>5</sup>

In a report dated March 18, 1998, Dr. Stern, a Board-certified orthopedic surgeon, selected to resolve the conflict in medical opinion, provided a history of appellant's condition and findings on examination, as well as commenting on a May 3, 1997 MRI of the cervical spine and July 15, 1997 electrodiagnostic studies performed by Dr. St. Hill. He diagnosed a resolved right shoulder strain and noted that appellant's subjective complaints were not substantiated by any objective findings and there was no evidence of any causally-related disability. Dr. Stern opined that appellant could return to her date-of-injury position. He noted that the "findings" of the 1997 objective tests were not related to the work incident of October 29, 1996 as the "findings" were possible to find in asymptomatic individuals. The Board finds that the thorough and well-rationalized report of Dr. Stern is entitled to special weight and, therefore, the Office properly terminated appellant's compensation benefits based upon his opinion that appellant's work-related condition had resolved.

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<sup>2</sup> The Board notes that the Office issued a decision dated July 19, 1999 denying appellant's recurrence claim. However, as this decision was issued after appellant filed her appeal to the Board on June 29, 1999, the Board has no jurisdiction in which to review this decision. See 20 C.F.R. § 501.2(c).

<sup>3</sup> See *Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

<sup>4</sup> 5 U.S.C. § 8123(a).

<sup>5</sup> *Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986).

Subsequent to the Office's termination of her compensation, appellant submitted an August 9, 1998 report and an April 20, 1998 prescription note from Dr. St. Hill concluding that appellant had cervical radiculopathy. However, as these reports are those of the physician on one side of the conflict resolved by the impartial medical specialist Dr. Stern, they are insufficient to overcome the special weight accorded Dr. Stern's report or to create a new conflict with the impartial medical specialist's report.<sup>6</sup> Appellant also submitted two reports from Dr. Rim, one undated and the other dated November 9, 1998, which concluded that appellant's right cervical radiculopathy was causally related to the October 29, 1996 work incident and that appellant could only work limited duty. The November 9, 1998 report failed to provide examination findings, objective or otherwise, to support continuing residuals from the October 29, 1996 injury. Although the undated report provided examination findings, there was no medical rationale or explanation as to how appellant's residuals were causally related to the October 29, 1996 injury.<sup>7</sup> Moreover, the undated report can not be used as probative evidence as the report is not on letterhead and does not contain the physician's signature or signature stamp as required in section 10.331(a).<sup>8</sup> Accordingly, these reports are not sufficient to outweigh or to create a conflict with the report of Dr. Stern, the impartial medical specialist.

Additionally, appellant's arguments are insufficient to create a conflict with the report of Dr. Stern, the impartial medical specialist. Appellant's attorney argued that neither the opinions of Dr. Manin nor Dr. Stern should have been used as the basis of the weight of medical evidence in terminating appellant's compensation. As previously discussed, the thorough and well-rationalized report of Dr. Stern is entitled to special weight pursuant to section 8123(a) and the Office properly terminated appellant's compensation benefits based upon his opinion that appellant's work-related condition had resolved. Moreover, despite appellant's assertion that Dr. Stern was Board-certified incorrectly, Dr. Stern is Board-certified in orthopedic surgery and appellant has not submitted anything to support his assertion. Appellant's arguments pertaining to Dr. Manin's report are without merit and are irrelevant in light of the fact that appellant was properly referred to an impartial medical specialist due to a conflict in medical opinion between Drs. St. Hill and Manin.

The excerpt from the publication by Howard L. Graham, J.D. is of little probative value. This submission does not contain a medical opinion concerning any causal relationship between appellant's claimed condition and her injury of October 29, 1995. Moreover, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.<sup>9</sup> Therefore, this evidence does not pertain to the relevant issue of the case, *i.e.*, whether the Office met its burden of proof in terminating appellant's compensation benefits

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<sup>6</sup> *Dorothy Sidwell*, 41 ECAB 857 (1990).

<sup>7</sup> See *Mary J. Briggs*, 37 ECAB 578 (1986); *Joseph T. Gulla*, 36 ECAB 516 (1985).

<sup>8</sup> 20 C.F.R. § 10.331(a) (1999).

<sup>9</sup> *William C. Bush*, 40 ECAB 1064, 1075 (1989).

effective May 7, 1998 on the grounds that appellant's injury-related disability had ceased. The Board has held that the submission of evidence, which does not address the particular issue involved is of little probative value.<sup>10</sup>

The decision of the Office of Workers' Compensation Programs dated April 23, 1999 is affirmed.

Dated, Washington, D.C.  
August 16, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>10</sup> *Supra* note 8.