U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA Y. BROUNTIE and U.S. POSTAL SERVICE,
POST OFFICE, Detroit, MI

Docket No. 00-1547; Submitted on the Record;
Issued April 4, 2001

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's medical benefits effective March 3, 1998; and (2) whether appellant has met her burden of proof in establishing any continuing employment-related condition or disability on or after March 3, 1998.

Appellant, a 51-year-old mail carrier, filed a notice of occupational disease on July 10, 1990 alleging that she developed a bilateral shoulder condition due to repetitive use of the arms and reaching above the shoulders in casing mail, carrying large loads and lifting heavy packages. The Office accepted appellant's claim for bilateral rotator cuff tendinitis on February 25, 1991. Appellant returned to her modified carrier duties.

The Office proposed to terminate appellant's medical benefits on January 29, 1998 and allowed appellant 30 days to respond. By decision dated March 3, 1998, the Office terminated appellant's medical benefits effective that date.

Appellant requested an oral hearing on March 19, 1998. Following the oral hearing on March 23, 1999, the hearing representative affirmed the Office's March 3, 1998 decision on June 11, 1999. Appellant requested reconsideration on December 7, 1999 and by decision dated January 10, 2000, the Office denied modification of the June 11, 1999 decision.

The Board finds that the Office met its burden of proof to terminate appellant's medical benefits effective March 3, 1998.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[1] After it has determined that an employee has disability causally related to his or her federal

[1] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[2] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[3] 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.[4]

In this case, appellant's attending physician, Dr. Donard Haggins, a rheumatologist, completed a series of form reports providing a diagnosis of bilateral shoulder tendinitis and listing appellant's work restrictions.

The Office referred appellant for a second opinion evaluation with Dr. Norman L. Pollak, a Board-certified orthopedist. In a report dated March 13, 1996, Dr. Pollak noted appellant's history of developing bilateral shoulder pain due to factors of her employment and performed a physical examination. He also examined x-ray studies. Dr. Pollak concluded, "[t]his woman has complaints dating back to 1989. Examination shows no objective findings that would indicate a need for disability status, work restrictions, or indicate a pathological condition." He stated that appellant could work without restrictions in her described occupation and that she did not require any specific treatment for her shoulders.

The Office referred this report to Dr. Haggins on November 20, 1997. On February 24, 1998 Dr. Haggins stated that an ultrasound revealed a partial thickness tear of the rotator cuff/supraspinatus tendon in both shoulders. He did not provide an opinion regarding the causal relationship of this finding to appellant's accepted employment injury.

The form reports from Dr. Haggins do not contain physical findings to support that appellant remained totally disabled. Furthermore, the February 24, 1998 report does not provide the necessary medical opinion evidence to establish a causal relationship between appellant's employment and the diagnosed condition of partial thickness rotator cuff tear bilaterally as found with the ultrasound.

The Board finds that, at the time the Office issued its March 3, 1998 decision, the weight of the medical opinion evidence rested with Dr. Pollak, the Board-certified orthopedist. He noted appellant's history of injury, provided his findings on physical examination, reviewed the available diagnostic studies, and concluded that appellant was neither disabled nor had medical residuals of her accepted condition of bilateral shoulder tendinitis.

The Board further finds that the case is not in posture for decision regarding whether appellant has any continuing condition or disability causally related to her employment.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that she had disability causally related to her accepted

[2] *Id.*

[3] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[4] *Id.*

employment injury.[5] To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship.

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

Following the Office's March 3, 1998 decision, appellant submitted additional new medical evidence. In a report dated April 3, 1998, Dr. Haggins noted appellant's history of injury and stated that the ultrasound diagnosed tears in her rotator cuffs. He listed his findings on physical examination and stated: "[I]t is my opinion that these tears can be contributed to her occupation, that of a mail carrier and/or to the trauma that she experienced in 1990." He recommends work restrictions.

In a report dated November 8, 1999, Dr. Haggins noted that he had examined appellant for years due to her shoulder symptoms. He stated that her initial diagnosis was bilateral biceps tendinitis later switched to bilateral shoulder tendinitis. Dr. Haggins stated: "Once an ultrasound was done and it revealed partial tear of the rotator cuff/supraspinatus muscle, the diagnosis was changed to partial tear of the rotator cuff. The patient's symptoms and complaints have been consistent throughout her care and treatment." He concluded:

> "It is my opinion that [appellant's] partial-thickness tear of the rotator cuff is [ex]plained by her employment … and upon reviewing her case [it] does not appear there is any specific recent trauma that could explain onset of the rotator cuff tear and that these partial tears have existed for several years, possibly back to 1990."

In this report, Dr. Haggins noted appellant's history of injury and described the diagnostic process. He stated that appellant's symptoms were consistent since 1990 and that a new diagnostic tool, the ultrasound, provided objective evidence of a medical condition, partial thickness tear of the rotator cuff, which was consistent with appellant's symptoms. Dr. Haggins further opined that this condition was related to appellant's employment duties and that the condition could have existed at the time of appellant's original claim to the Office.

[5] *George Servetas*, 43 ECAB 424, 430 (1992).

[6] *James Mack*, 43 ECAB 321 (1991).

Section 8123(a) of the Federal Employees' Compensation Act,[7] provides, "[i]f 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." In this case, there is a conflict of medical opinion evidence between the second opinion physician, Dr. Pollak, a Board-certified orthopedist, who found no continuing employment-related condition or disability and appellant's attending physician, Dr. Haggins, a rheumatologist, who found based on a diagnostic test not used by Dr. Pollak that appellant's continuing symptoms were causally related to her employment.

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[8] On remand, the Office should refer appellant, a statement of accepted facts and a list of specific questions to an appropriate Board-certified physician to determine whether her diagnosed condition of partial thickness rotator cuff tear is related to her employment duties and whether she continues to be partially disabled due to this condition. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.[9]

The June 11, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed. The January 10, 2000 decision is hereby set aside and the case is remanded for further development consistent with this opinion.

Dated, Washington, DC
April 4, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[7] 5 U.S.C. §§ 8101-8193, 8123(a).

[8] *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

[9] The Board notes that appellant has submitted additional medical evidence diagnosing the condition of bilateral carpal tunnel syndrome due to her employment duties. As the Office has not issued a final decision addressing this claim, the Board will not address it for the first time on appeal. 20 C.F.R. § 501.2(c).