

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY M. McCARTY and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

*Docket No. 02-2138; Submitted on the Record;
Issued December 3, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective August 11, 2001 on the grounds that he had no further disability causally related to his accepted employment injury; and (2) whether the Office met its burden of proof to terminate authorization for medical treatment.

On January 2, 1998 appellant, then a 49-year-old mail processing clerk, filed an occupational disease claim alleging that he experienced pain in the left shoulder causally related to factors of his federal employment. He did not stop work. The Office assigned the claim file number A09-436384 and accepted the claim for a traumatic cervical sprain and a subluxation of the cervical spine at C5-6.¹

Appellant filed a second occupational disease claim alleging that on April 1, 1999 he realized that he sustained a right neck and right shoulder condition causally related to factors of his federal employment.² The Office initially assigned the claim file number A09-455544. On October 15, 1999 the Office doubled the claim into file number A09-436384. The Office accepted the claim for right shoulder rotator cuff tendinitis and impingement with a small partial tear of the rotator cuff.³

¹ The Office initially denied appellant's claim in a decision dated March 6, 1998. In a decision dated June 2, 1998, a hearing representative vacated the Office's March 6, 1998 decision and accepted the claim for a traumatic cervical sprain. The claim was later expanded to include a subluxation of the cervical spine at C5-6.

² The Form CA-2 does not appear to be in the record.

³ The Office initially denied appellant's claim in decisions dated October 7, 1999 and January 14, 2000. By decision dated April 12, 2000, the Office vacated its October 7, 1999 and January 14, 2000 decisions and accepted appellant's claim for right rotator cuff tendinitis, impingement and a partial tear of the rotator cuff.

The Office authorized an arthroscopy of appellant's right shoulder. On July 11, 2000 Dr. Ronald G. Hess, an osteopath and appellant's attending physician, performed a "[r]ight shoulder arthroscopy with arthroscopic subacromial decompression and an arthroscopic distal clavicle excision and a slap lesion debridement." Appellant stopped work following the surgery on July 11, 2000 and returned to limited-duty employment on August 2, 2000.

On November 20, 2000 Dr. Hess indicated to the Office that appellant had a herniated disc at C5-6. By letter dated November 21, 2000, the Office requested that Dr. Hess submit a rationalized report regarding whether the herniated disc was causally related to appellant's employment.

In a report dated December 13, 2002, Dr. Hess diagnosed right shoulder impingement and cervical disc disease. He related that appellant had experienced pain in his cervical spine subsequent to his right shoulder surgery and that x-rays revealed degenerative joint disease at C5-6. Dr. Hess noted that he was awaiting the results of a magnetic resonance imaging (MRI) scan. He stated, "The medical connection between the herniated disc and the current accepted conditions are pain in the shoulder could certainly have partially [a]risen from the disc herniation."

By letter dated January 23, 2001, the Office referred appellant for a second opinion evaluation with Dr. Richard T. Sheridan, a Board-certified orthopedic surgeon.

In a report dated February 19, 2001, Dr. Sheridan discussed appellant's work history, reviewed the results of objective tests and listed detailed findings on physical examination. He opined that appellant's rotator cuff tendinitis with resulting surgery was work related but that the subluxation at C5-6 was "a nonwork[-]related diagnosis." He further opined that appellant's accepted conditions had resolved and, that he had not sustained a herniated disc at C5-6 due to factors of his federal employment. Dr. Sheridan found that appellant could perform his usual work duties with restrictions on performing overhead work. In an accompanying work-restriction evaluation, Dr. Sheridan indicated that appellant could work 8 hours a day with no pushing, pulling or lifting over 30 pounds and no reaching over the shoulder.

By letter dated February 28, 2001, the Office requested that Dr. Sheridan discuss whether appellant had any objective residuals of his accepted conditions, which included a subluxation at C5-6. The Office further requested that Dr. Sheridan address whether appellant's work restrictions were due to his accepted employment injuries.

In a response dated March 2, 2001, Dr. Sheridan stated:

"There are no objective findings to support each of the accepted conditions of traumatic cervical strain, subluxation at C5-6, right shoulder rotator cuff tendinitis and impingement with tear and surgery. Each of the accepted conditions have resolved. The objective findings to support my opinion are: [f]ull motion in the shoulders with no motor deficits; [and] negative tests for rotator tear and impingement bilaterally."

Dr. Sheridan related that appellant could not perform his regular employment duties but further stated that the restrictions were “prophylactic in nature so that he does not get any exacerbations of his previously diagnosed conditions.”

By letter dated June 1, 2001, the Office requested that Dr. Hess review and comment on the opinion of Dr. Sheridan. In a report dated June 15, 2001, Dr. Hess indicated that he agreed with Dr. Sheridan that appellant’s shoulder condition had resolved and that his disc herniation at C5-6 was “not related to his regular job duties.” Dr. Hess stated that appellant should be capable of performing “most regular activities” and that he “would agree that he cannot do a significant amount of overhead work but should be able to do some.”

On July 5, 2001 the Office issued appellant a proposed notice of termination on the grounds that the weight of the medical evidence established that he had no further disability causally related to his employment injury. The Office provided appellant 30 days within which to submit additional factual and medical information relevant to his claim.

By decision dated August 7, 2001, the Office finalized its termination of appellant’s compensation and medical benefits effective August 11, 2001.

Appellant requested a hearing before an Office hearing representative, which was held on February 13, 2002. By decision dated May 9, 2002, the hearing representative affirmed the Office’s August 7, 2001 termination of benefits.

The Board finds that the Office met its burden of proof to terminate appellant’s compensation benefits on the grounds that the weight of the medical evidence established that he had no further disability causally related to his accepted employment injuries.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.⁴ The Office’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The Board finds that the Office met its burden of proof to terminate appellant’s compensation based on its finding that the opinion of Dr. Sheridan constituted the weight of the medical evidence. The Board has carefully reviewed the opinion of Dr. Sheridan and finds that it has reliability, probative value and convincing quality with respect to the conclusion reached regarding whether appellant has any further disability due to his accepted employment injury. He provided a thorough review of the factual and medical background of appellant’s claim and accurately summarized the relevant medical evidence. In a report dated February 19, 2001, Dr. Sheridan opined that appellant’s accepted conditions had resolved and that he could perform his usual employment with restriction against overhead work. In an addendum dated March 2, 2000, he specifically found that there were “no objective findings to support each of the accepted

⁴ *David W. Green*, 43 ECAB 883 (1992).

⁵ *See Del K. Rykert*, 40 ECAB 284 (1988).

conditions of traumatic cervical strain, subluxation at C5-6, right shoulder rotator cuff tendinitis and impingement with tear and surgery and that “[e]ach of the accepted conditions have resolved.” Dr. Sheridan provided as rationale for his opinion the fact that appellant had complete range of motion in his shoulders and no signs of a rotator tear or impingement. He further stated that the work restrictions provided for appellant were prophylactic in nature.⁶ Dr. Sheridan also concluded that appellant did not sustain an employment-related herniated disc at C5-6. At the request of the Office, appellant’s attending physician, Dr. Hess, reviewed Dr. Sheridan’s report and agreed with his opinion that appellant’s shoulder condition had resolved and that his employment duties did not cause a disc herniation at C5-6.⁷ Accordingly, the Board finds that the Office properly met its burden of proof to terminate appellant’s compensation benefits based on the opinion of Dr. Sheridan.

The remaining evidence of record is insufficient to establish that appellant remains disabled due to his accepted employment injury. At the hearing, appellant submitted statements from coworkers describing how he injured his right shoulder and neck performing the duties of his employment. However, the issue at hand, whether appellant remains disabled due to his accepted employment injury, is medical in nature. Lay persons such as appellant’s coworkers are not competent to give medical opinions regarding the cause of appellant’s condition.⁸ Any medical evidence relied upon by the Office to resolve an issue must be in writing and signed by a physician.⁹

The Board further finds that the Office properly terminated appellant’s authorization for medical treatment.

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹⁰ 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.¹¹ The Office met this burden through the report of Dr. Sheridan, who opined that appellant’s accepted employment injuries had resolved and provided rationale for his opinion.

⁶ The Board has held that the fear of a future injury is not compensable; *see William A. Kandel*, 43 ECAB 1011 (1992).

⁷ Dr. Hess indicated that appellant should not do “a significant amount of overhead work” but did not state whether this was a current or prophylactic restriction.

⁸ *See James A. Long*, 40 ECAB 538, 542 (1989).

⁹ *Id.*

¹⁰ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

¹¹ *Id.*

The decision of the Office of Workers' Compensation Programs dated May 9, 2002 is affirmed.

Dated, Washington, DC
December 3, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member