

**United States Department of Labor
Employees' Compensation Appeals Board**

JOYCE M. EVANS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sandusky, OH, Employer**

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**Docket No. 04-77
Issued: March 4, 2004**

Appearances:
Joyce M. Evans, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 6, 2003 filed a timely appeal of decisions dated December 12, 2002 and September 16, 2003 in which the Office of Workers' Compensation Programs terminated her compensation benefits for an employment-related right shoulder strain. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits for an employment-related right shoulder strain.

FACTUAL HISTORY

On January 25, 2001 appellant, then a 50-year-old window clerk, filed a Form CA-2, occupational disease claim, alleging that she sustained right shoulder pain due to repetitive duties at work. She stopped work that day and returned on January 30, 2001. On the claim form, appellant's supervisor made a notation that appellant was also filing a claim for right carpal

tunnel syndrome.¹ On April 19, 2001 the Office accepted that appellant sustained an employment-related right shoulder strain and authorized a magnetic resonance imaging (MRI) scan. She missed intermittent periods of work, thereafter, stopped completely on June 4, 2001, and received appropriate compensation, being placed on the periodic rolls effective February 23, 2002.

The Office continued to develop the claim and on August 31, 2001 referred appellant for nurse intervention. Appellant came under the care of Dr. Paul J. Bruner, an osteopathic physician,² who submitted a number of reports dating from June 4, 2001 to February 28, 2002 in which he advised that appellant could not work. By letter dated May 9, 2002, the Office requested that Dr. Bruner submit a current report regarding appellant's right shoulder condition. On June 6, 2002 the employing establishment submitted an investigative report.³

By letter dated June 11, 2002, the Office referred appellant, along with the medical record, a statement of accepted facts including a job description, a set of questions and the employing establishment report, to Dr. Jeffrey LaPorte, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated June 7, 2002, Dr. LaPorte advised that appellant could perform window clerk duties, and in a work capacity evaluation dated June 14, 2002, he advised that she could return to full duty without restrictions. By letter dated July 24, 2002, the Office forwarded a copy of Dr. LaPorte's reports and the employing establishment investigative report to Dr. Bruner and posed questions regarding appellant's condition. A "Dr. Kaffen" submitted a report dated September 18, 2002 which described range-of-motion findings of the right upper extremity.⁴

By letter dated October 11, 2002, the Office informed appellant that it proposed to terminate her compensation benefits on the grounds that her right shoulder strain had resolved. Appellant disagreed with the proposed termination and submitted a newsletter regarding chronic pain and reports dated March 14, 2001 and January 3, 2002 from Dr. Bruner. In a decision dated December 12, 2002, the Office terminated appellant's compensation benefits, effective that day, on the grounds that the medical evidence established that her shoulder condition had resolved.

On December 21, 2002 appellant, through her attorney, requested a hearing. In a report dated April 10, 2003, Dr. Bruner advised that any restrictions based on appellant's shoulder condition should be dropped completely and dismissed her from his care. Appellant did not attend the hearing, held on July 31, 2003. At the hearing her attorney stated that appellant was

¹ The record indicates that appellant had a number of claims: A9-318631 and A9-443375 were consolidated lumbar strain claims; A9-382052 was denied in 1994; A9-2007192, a claim for carpal tunnel syndrome claim; and A9-2007191, the instant claim.

² Dr. Bruner is Board-certified by the American Osteopathic Board of Family Physicians.

³ The report, which included photographs and video surveillance, reported appellant's activities on 13 days from April 24 to May 29, 2002. She was observed driving a sports utility vehicle, lifting and carrying children, parcels and groceries, pushing, pulling, twisting, bending and carrying her purse over her right shoulder. At no time did she exhibit discomfort.

⁴ The signature on the report is illegible. Appellant's attorney, however, indicated that it was completed by "Dr. Kaffen." No further description of Dr. Kaffen is contained in the case record.

receiving wage-loss compensation under her carpal tunnel syndrome claim but had chosen disability retirement. He argued that appellant wanted permanent disability based on all her claims and that a conflict existed between the opinions of Drs. Bruner and LaPorte. No additional evidence was submitted. By decision dated September 16, 2003, an Office hearing representative affirmed the prior decision.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

ANALYSIS

The Board initially notes that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and a claimant's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to particular employment factors or incidents.⁷ The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. LaPorte, the second opinion examiner, who advised that appellant had no residuals of her employment-related right shoulder condition and could perform the duties of window clerk. Appellant submitted a number of reports from her treating physician, Dr. Bruner, including an attending physician's report dated February 28, 2002, in which he diagnosed right shoulder strain, knee fracture, right carpal tunnel syndrome, right foot strain, right wrist strain and lumbar strain with pain. He checked a box "yes" indicating that the diagnoses were employment related, stating "repetitive lifting and stamping of parcels." Regarding her shoulder, Dr. Bruner stated that "the degeneration of the joint will likely preclude her from work involving repetitive use of the right shoulder. Combined with the severity of her daily pain from the low back, right foot and left knee, I believe that she is totally and permanently disabled." The record also contains a September 18, 2002 report in which Dr. Kaffen provided range-of-motion findings for appellant's right upper extremity. On May 9 and July 24, 2002 the Office requested an updated report from Dr. Bruner. He did not respond until April 10, 2003, when he advised that the restrictions based on appellant's right shoulder could be dropped completely.

While Dr. Bruner advised in February 2002 that appellant's shoulder would "likely" preclude her from work involving repetitive use of the right shoulder, the Board finds this report

⁵ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁶ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁷ *See Gloria J. McPherson*, 51 ECAB 441 (2000).

speculative,⁸ especially in light of his April 2003 report. Furthermore, Dr. Kaffen's report, without further explanation, is of no probative value.⁹ As Dr. LaPorte provided thorough, well-rationalized reports in which he explained his findings and conclusions, the Board finds that the Office, therefore, properly determined that appellant's right shoulder strain had resolved on December 12, 2002.

CONCLUSION

The Board therefore finds that the Office met its burden of proof to terminate appellant's compensation benefits due to her right shoulder strain effective December 12, 2002.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 16, 2003 and December 12, 2002 be affirmed.

Issued: March 4, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ The Board has held that medical opinions which are speculative or equivocal in character have little probative value. *Vaheh Mokhtarians*, 51 ECAB 190 (1999).

⁹ See *Jimmie H. Duckett*, 52 ECAB 332 (2001).