

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

KARIE A. HOOVER, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Diego, CA, Employer**

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**Docket No. 04-234
Issued: September 1, 2004**

Appearances:
Stephen A. Meikle, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On November 4, 2003 appellant filed a timely appeal from the September 2, 2003 decision of the Office of Workers' Compensation Programs, which terminated her compensation and medical benefits effective that date. 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 properly terminated appellant's compensation and medical benefits effective September 2, 2003 on the basis that her work-related cervical, lumbar and right trapezuis strains had resolved.

FACTUAL HISTORY

This is appellant's second appeal before the Board on this issue. In the prior appeal, on January 10, 2003 the Board reversed the Office's decisions dated May 22, 2002 and August 15, 2001, finding that the Office had improperly terminated benefits because there remained an unresolved conflict in medical opinion evidence on whether appellant had continuing disability

causally related to her June 22, 1995 injuries or had injury-related residuals which required further medical treatment.¹ The facts and the circumstances of the case are completely presented in the prior decision and are hereby incorporated by reference.

Following the Board's January 10, 2003 decision, the Office created a supplemental statement of accepted facts and questions to be resolved and it referred appellant to Dr. George A. Nicola, a Board-certified orthopedic surgeon, for an impartial medical examination.

A May 27, 2003 motor nerve study and electromyogram (EMG) study were reported as being normal with no electrophysiologic findings of a right cervical radiculopathy, brachial plexopathy or peripheral/entrapment neuropathy in the suprascapular, axillary, musculocutaneous, median or ulnar nerves.

In a report dated June 30, 2003, Dr. Nicola reviewed appellant's factual and medical history, provided an analysis of the previous medical records and discussed her previously treated conditions. He reported her present complaints, which were limited to subjective symptoms of a painful right shoulder and shaking of her arm, accompanied by headaches and noted that she claimed that her back impairment was "cured following the physical therapy." Dr. Nicola indicated the results of his review of appellant's systems, which included a stiff neck, foggy vision accompanied by headaches and asthma, reported his findings upon physical examination and testing and noted that appellant's shoulders were normal without droop and with full range of unrestricted cervical motion. He noted appellant's subjective complaints of some tenderness over the right trapezoid area, diffuse tenderness over the scapula and some tenderness over the vertebral border of the right scapula, but noted that she had no acromioclavicular tenderness, no winging even with pressure and resistance, no evidence of muscle spasm and no deltoid tenderness or significant swelling. Dr. Nicola noted that there was some popping noted in both shoulders which appeared to be over the coracoacromial ligaments but with full and normal range of motion. He noted that appellant had a full range of cervical motion with flexion, extension and rotation. Dr. Nicola noted that appellant's neurological examination was normal with active reflexes in the biceps, triceps and brachioradialis and that she had normal strength of 60 pounds bilaterally, with no weakness in abduction, adduction, flexion extension or rotation and sensation intact to light touch and pinprick over both upper extremities. He noted that, because of appellant's continued complaints of pain, he ordered a magnetic resonance imaging (MRI) scan, which revealed a normal right shoulder with a slightly increased signal in the supraspinatus tendon with very slight effusion noted.

Dr. Nicola answered the Office's questions noting that his examination revealed no objective findings related to appellant's previously accepted conditions. He found no atrophy of her right shoulder and no objective findings to correlate with her right shoulder and trapezoid pain complaints. Dr. Nicola found no reason to recommend further medical treatment and indicated that appellant had been just living with her subjective pain for a number of years. He observed that there was a notation in appellant's records that she was lifting a couch around Christmas time in 2001 and had a shoulder injury, but he noted that there was no other

¹ Docket No. 02-2032 (issued January 10, 2003).

verification of this in the records or of any related injury to her shoulder. Dr. Nicola noted that on examination there was no evidence of any neurology findings of the upper extremity such as reflex changes or sensory changes and that there was no Tinel's test at the elbow or wrist suggesting nerve entrapment and also a negative Phalen's test. He noted that there was no sign of cubital or carpal tunnel problems, no evidence of cervical radiculopathy and no evidence of significant limitations with the right shoulder other than appellant's subjective complaints of pain over the shoulder. Dr. Nicola found that there was no evidence of objective permanent impairment that would support an impairment rating and no evidence of need for further treatment related to her 1995 injuries.

By decision dated September 2, 2003, the Office terminated appellant's compensation and medical benefits finding that the weight of the medical evidence, as represented by Dr. Nicola's June 30, 2003 report, established that she had no further disability for work or injury residuals requiring further medical treatment, causally related to her accepted employment injuries.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁴ 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.⁵

Section 8123(a) of the Federal Employees' Compensation Act⁶ provide that, 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.⁷

In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well

² *Curtis Hall*, 45 ECAB 316 (1994).

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁵ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁶ 5 U.S.C. § 8123(a).

⁷ *See Lynda J. Olson*, 52 ECAB 433 (2001); *Harry T. Mosier*, 49 ECAB 688 (1998).

rationalized and based upon a proper factual and medical background, must be given special weight.⁸

ANALYSIS

In the instant case, the Board found on prior appeal an unresolved conflict of medical opinion regarding whether appellant had continuing employment-related disability or employment-related residuals requiring further medical treatment. Therefore, the Office appropriately referred appellant to an impartial medical examiner, Dr. Nicola, for resolution of the existing conflict in medical opinion evidence.

Dr. Nicola conducted a thorough and comprehensive orthopedic and neurologic evaluation of appellant's cervical, lumbar and right trapezuis regions and he reported the nonpathologic findings in detail. He reviewed appellant's MRI scan study results and found them to be normal. Guided by appellant's subjective symptoms of a painful right shoulder and shaking of her arm, accompanied by headaches, Dr. Nicola examined her cervical region, her right shoulder and upper extremity and right lumbar region and he indicated that the results of his review of her systems, which included a stiff neck, foggy vision accompanied by headaches and asthma, were unremarkable, with areas of tenderness without neurologic correlation. After testing, he noted that appellant's shoulders were normal without droop and had full range of unrestricted cervical motion. Dr. Nicola noted appellant's subjective complaints of some tenderness over the right trapezuis area, diffuse tenderness over the scapula and some tenderness over the vertebral border of the right scapula, but found no neurologic basis for these complaints of tenderness. He noted that there was a full and normal range of motion in both shoulders. Dr. Nicola noted that appellant had a full range of cervical motion. He found no reason to recommend further medical treatment and noted that on examination there was no evidence of any pathologic neurological findings of the upper extremity such as reflex changes or sensory changes and that there was no Tinel's test at the elbow or wrist suggesting nerve entrapment and also a negative Phalen's test. Dr. Nicola found that there was no objective evidence of permanent impairment that would support an impairment rating and no evidence of need for further treatment related to her 1995 injuries.

As Dr. Nicola's impartial medical report was based upon a proper, complete and accurate factual and medical background, because it was supported by the lack of pathological objective findings upon examination and because he explained the basis for his determinations and conclusions, his report was well rationalized and the Board finds that it is entitled to that special weight noted above. The Office, therefore, properly found that Dr. Nicola's report represented the weight of the medical opinion evidence in establishing that appellant's employment-related, muscle strain-related disability had ceased, that there was no further need for injury-related medical treatment and that any continuing medical condition was not related to appellant's original employment injuries.

⁸ Gary R. Sieber, 46 ECAB 215, 225 (1994).

Inasmuch as the Office properly accorded special weight to the impartial medical examiner's June 30, 2003 findings, the Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits.⁹

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits effective September 2, 2003.

ORDER

IT IS HEREBY ORDERED THAT the September 2, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 1, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁹ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).