

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

CHERYL SICKLER, Appellant)
)
and)
)
DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Wilkes-Barre, PA, Employer)
)

**Docket No. 06-330
Issued: July 26, 2006**

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On November 28, 2005 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated April 21 and November 10, 2005 denying modification of a decision terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that she had any continuing disability after April 2, 2003.

FACTUAL HISTORY

This is the second appeal in the present case. In a February 3, 2004 decision, the Board affirmed the Offices' decisions dated April 2 and August 23, 2003 terminating all of appellant's benefits effective April 2, 2003.¹ The Board determined that the second opinion physician's

¹ The Office accepted that appellant sustained tendinitis of the left shoulder in the performance of her duties on July 23, 2001.

opinion was sufficient to meet the Office's burden of proof in terminating appellant's wage and medical benefits and that appellant failed to establish that she was disabled from work on or after April 2, 2003 causally related to the July 23, 2001 employment injury. The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.²

There was pertinent medical evidence submitted prior to the Board's decision which is relevant to the present appeal before the Board. The Office referred appellant for a second opinion evaluation to Dr. David B. Yanoff, a Board-certified orthopedist. He noted in reports dated January 21 and November 27, 2002 that appellant's July 23, 2001 injury had resolved based on the absence of significant objective findings on physical examination to suggest continuing symptoms of shoulder tendinitis. Dr. Yanoff indicated that shoulder tendinitis resolves with conservative treatment over a 6- to 12-week period and appellant was appropriately treated with modification of activity, physical therapy and medication. He opined that appellant's symptoms were consistent with nonwork-related neurological diagnosis of brachial plexus neuritis and there were no objective findings to support a continuing disability based on her work-related injuries.

On January 4, 2005 appellant, through her attorney, requested reconsideration and submitted additional evidence. She submitted employing establishment medical records from October 29, 2001 to July 23, 2004 which noted appellant's treatment for brachial plexus-related pain syndrome, myalgia and myositis. In an operative report dated May 14, 2004, Dr. Eric I. Mitchell, a Board-certified orthopedist, performed manipulation under anesthesia with arthroscopic examination with partial acromioplasty and diagnosed adhesive capsulitis with impingement syndrome. Also submitted was a report from Dr. Gregory J. Menio, a Board-certified orthopedist, dated November 23, 2004, who noted a comprehensive history of appellant's work injury of July 23, 2001 and subsequent treatment. Upon physical examination he noted neck forward flexion of 20 degrees, rotation of 60 degrees bilaterally, extension of 15 degrees, shoulder range of motion of 150 degrees bilaterally, abduction external rotation of 90 degrees bilaterally, abduction internal rotation of 55 degrees on the right and 0 degrees on the left, abduction of the arm was 180 degrees, adduction was 20 degrees bilaterally, extension of the shoulder was 60 degrees on the right and 30 degrees on the left. He diagnosed brachial plexopathy, mild residual adhesive capsulitis and tendinitis of her shoulder which he opined was related to the work-related injury of July 23, 2001. Dr. Menio further opined that the diagnosed conditions were medically connected with the work-related injury of July 23, 2001. He advised that appellant reached maximum medical improvement; however, she was not capable of full duty. Dr. Menio opined that, based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,³ (A.M.A., *Guides*) appellant sustained a 16 percent impairment of the left upper extremity.

² Docket No. 03-2214 (issued February 3, 2004).

³ A.M.A., *Guides* (5th ed. 2001).

In an April 21, 2005 decision, the Office denied modification of the prior decision.

By letter dated April 25, 2005, appellant appealed to the Employees' Compensation Appeals Board. In a letter dated June 13, 2005, appellant sought to withdraw her appeal and requested reconsideration. On July 28, 2005 the Office informed appellant that her case was currently before the Board and the Office could take no further action at that time. In an order dated September 6, 2005, the Board dismissed appellant's appeal.⁴

Appellant submitted a statement dated September 9, 2005 and asserted that there was a conflict in opinion between Dr. Yanoff, the Office referral physician, and Dr. Menio, appellant's treating physician with regard to whether appellant sustained residuals of her work injury and could return to work. Also submitted were medical records for a hospital admission from May 3 to 7, 2003 which noted that appellant fell in May 2003 and was treated for head trauma. She was diagnosed with closed-head trauma, laceration of the forehead, left ventricular hypertrophy with mild pulmonary hypertension, history of traumatic brachial plexus injury and colonic polyposis.

By decision dated November 10, 2005, the Office denied modification of the prior decision.

LEGAL PRECEDENT

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant.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

ANALYSIS

The Board finds that appellant has not established that she has any continuing residuals of her tendinitis of the left shoulder causally related to her accepted employment injuries on or after April 2, 2003.

⁴ Docket No. 05-1123 (issued September 6, 2005).

⁵ *Joseph A. Brown, Jr.*, 55 ECAB ___ (Docket No. 04-376, issued May 11, 2004).

⁶ *See Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

Appellant submitted employing establishment medical records from October 29, 2001 to July 23, 2004 which noted appellant's treatment for brachial plexus-related pain syndrome, myalgia and myositis. An operative report from Dr. Mitchell dated May 14, 2004 noted that he performed an arthroscopic examination and a partial acromioplasty and diagnosed adhesive capsulitis with impingement syndrome. However, the Office never accepted that appellant sustained brachial plexus-related pain syndrome, myalgia, myositis, adhesive capsulitis with impingement syndrome as a result of her work injury and there is no medical rationalized evidence to support such a conclusion.⁷ Therefore, these documents are insufficient to meet appellant's burden of proof. Moreover, these reports did not include a rationalized opinion regarding the causal relationship between appellant's current condition and her accepted conditions.⁸

Also submitted was a report from Dr. Menio dated November 23, 2004, who diagnosed brachial plexopathy and mild residual adhesive capsulitis which he opined was "related to her work-related injury of July 23, 2001." He further noted that appellant did "suffer residual from the July 23, 2001 injury. She has brachial plexopathy with an abnormal EMG and abnormal sensory-motor findings on physical examination. In addition, she has had tendinitis of her shoulder and adhesive capsulitis." He opined that "the diagnosed conditions were medically connected with the work-related injury of July 23, 2001. I believe that [appellant] has injury-related factors of disability; namely, pain and limitation of motion of the left upper extremity as well as decreased sensitivity in the left hand." Dr. Menio advised that appellant reached maximum medical improvement; however, she was not capable of full duty. However, as noted above, the Office never accepted that appellant developed brachial plexopathy and mild residual adhesive capsulitis as a result of her work injury and there is no medical rationalized evidence to support such a conclusion.⁹ For example, Dr. Menio did not explain the medical reasons by which any of these conditions would be caused or aggravated by the July 23, 2001, employment injury, especially in light of Dr. Yanoff's November 2002 findings of no objective findings on examination. Therefore, these documents are insufficient to meet appellant's burden of proof. Although Dr. Menio indicated that appellant still experienced symptoms of tendinitis of her shoulder, his report is of diminished probative value as it did not include a rationalized opinion regarding the causal relationship between appellant's current condition and her accepted condition.¹⁰ Dr. Menio further opined that appellant sustained a 16 percent impairment of the left upper extremity. However, the Office has not issued a decision adjudicating appellant's entitlement, if any, to a schedule award. Thus, this matter is not presently before the Board.¹¹

On appeal, appellant contends that Dr. Menio's opinion is sufficient to create a conflict with that of Dr. Yanoff. However, the Board has held that a simple disagreement between two

⁷ See *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁸ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁹ See *Alice J. Tysinger*, *supra* note 7.

¹⁰ See *George Randolph Taylor*, *supra* note 8.

¹¹ See 20 C.F.R. § 501.2(c).

physicians does not, of itself, establish a conflict. To constitute a conflict of medical opinion, the opposing physicians' reports must be of virtually equal weight and rationale.¹² As noted above, Dr. Menio's reports, while providing some support for causal relationship, are of diminished probative value as they do not contain sufficient medical reasoning to support their conclusion. As such, Dr. Menio's reports are insufficient to create a conflict in the medical evidence with the well rationalized report of Dr. Yanoff.

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between her current condition and her accepted work-related injury of July 23, 2001. Therefore the Board finds that these reports are insufficient to meet appellant's burden of proof.

CONCLUSION

The Board finds that appellant failed to establish that she had any continuing disability after April 2, 2003.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 10 and April 21, 2005 are affirmed.

Issued: July 26, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

¹² *John D. Jackson*, 55 ECAB ____ (Docket No. 03-2281, issued April 8, 2004).