

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

C.B., Appellant)

and)

DEPARTMENT OF DEFENSE, SELFRIDGE)
COMMISSARY, Mount Clemens, MI, Employer)

**Docket No. 07-447
Issued: June 20, 2007**

Appearances:
J.P. Karpinsky, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 7, 2006 appellant filed a timely appeal from a November 6, 2006 decision of the Office of Workers' Compensation Programs that terminated her medical and compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether the Office properly terminated appellant's compensation and medical benefits effective November 6, 2006 on the basis that she no longer had any disability or residuals due to her accepted injury.

FACTUAL HISTORY

On April 7, 2004 appellant, then a 54-year-old sales store checker, filed a traumatic injury claim alleging that she injured her left shoulder while lifting a case of water off the register belt that day. The Office accepted appellant's claim for left shoulder sprain, left

shoulder rotator cuff rupture and left shoulder bursae tendon disorder. Appropriate compensation and medical benefits were paid.

By letter dated April 10, 2006, the Office referred appellant to Dr. Paul J. Drouillard, an osteopath, for a second opinion. In a medical report dated April 26, 2006, Dr. Drouillard diagnosed appellant's status as post diagnostic operative arthroscopy left shoulder times two, rotator cuff repair, successful surgery, with no functional impairment. He was "unable to find any objective abnormality to correspond with her subjective complaints." Dr. Drouillard noted no evidence of any functional impairment and opined that appellant could return to unrestricted work. He further opined that no further treatment was necessary. In a June 2, 2006 report, Dr. Drouillard noted that he reviewed the operative report dated August 10, 2004 at which time an arthroscopy of the left shoulder was performed with subacromial decompression and arthroscopic rotator cuff repair and that his opinion remained as stated.

On May 31, 2006 the Office forwarded Dr. Drouillard's report to Dr. Nicholas Schoch, appellant's osteopath, for comment. In a report dated July 18, 2006, Dr. Schoch listed his impressions as history of right shoulder impingement now improved and status post left shoulder arthroscopy, subacromial decompression, rotator cuff repair. He recommended permanent restrictions with any type of heavy overhead lifting, no lifting more than 20 pounds and no repetitive lifting over head with the left arm.

The Office conflict in medical opinion between Drs. Schoch and Drouillard with regard to whether the continuing disability was causally related to appellant's employment, the extent of the work-related injury, the degree of disability associated with the work-related condition and the physical limitations/restrictions imposed by residuals from his work injury. Appellant was referred to Dr. Milton Green, a Board-certified orthopedic surgeon, selected as the impartial medical specialist. In a medical report dated September 21, 2006, Dr. Green stated that he found no residuals of the accepted work-related left shoulder strain, left shoulder rotator cuff tear and rupture and left shoulder bursae tendon disorder. He did not find that these diagnoses were active and disabling. Dr. Green explained that there was no evidence of muscular atrophy or swelling, no crepitus and a well-healed small incision over the dorsum of the left shoulder. He noted that the impingement tests were negative, that shoulder strength was excellent and the neurological examination of the upper extremities was normal. Dr. Green did note subjective findings of 5 to 10 degrees limitations of flexion but no objective abnormalities. He found that appellant was capable of returning to her date-of-injury job as a sales store checker without restrictions.

On October 4, 2006 the Office issued a notice of proposed termination, finding that the weight of medical evidence established that appellant no longer had any residuals or disability due to her accepted work injury.

By letter dated October 27, 2006, appellant responded to the proposed notice of termination. She contended that neither consulting physician performed a thorough examination. Appellant also alleged that she was unable to perform full-duty work.

By decision dated November 6, 2006, the Office terminated appellant's medical and wage-loss benefits effective that date.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to her federal 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

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.³

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.⁴

ANALYSIS

The Office accepted that appellant sustained left shoulder sprain, left shoulder rotator cuff rapture and left shoulder bursae tendon disorder. Therefore, it has the burden of proof to justify the termination of compensation and medical benefits for these conditions. In this case, the Office terminated appellant's compensation and medical benefits based on the report of Dr. Green, the impartial medical examiner. The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Appellant's treating osteopath, Dr. Schoch, noted that appellant had a history of right shoulder impingement now improved and status left shoulder arthroscopy, subacromial decompression and rotator cuff repair. He recommended permanent restrictions with any type of heavy overhead lifting, no lifting more than 20 pounds and no repetitive lifting overhead with the left arm. However, Dr. Drouillard, a second opinion physician, noted that appellant could return to unrestricted work and that no further treatment was necessary. In order to resolve the conflict, the Office referred appellant to an impartial medical examiner, Dr. Green. After conducting a physical examination and reviewing appellant's medical reports, Dr. Green concluded that appellant had no residuals of the accepted work-related left shoulder strain, left shoulder rotator cuff tear and rupture and left shoulder bursae tendon disorder. He pointed out that the surgical scar had healed, that the objective tests were normal and that there was no other objective evidence of residuals. Dr. Green opined that appellant was capable of returning to her date-of-injury job as a sales store checker without restrictions. Where a case is referred to an impartial medical examiner, the opinion of such specialist, if sufficiently well rationalized and based on a

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivien L. Minor*, 37 ECAB 541 (1986).

³ *John F. Glynn*, 53 ECAB 562 (2002).

⁴ *James P. Roberts*, 31 ECAB 1010 (1980).

proper factual and medical background, must be given special weight.⁵ The Board finds that the special weight of the medical evidence is represented by the thorough, well-rationalized opinion of the impartial medical examiner, Dr. Green.⁶

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation and medical benefits effective November 6, 2006 on the basis that she no longer had any disability or residuals due to her accepted injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 6, 2006 is affirmed.

Issued: June 20, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁵ *Richard O'Brien*, 53 ECAB 234, 241-42 (2001).

⁶ The Board notes that, following the November 6, 2006 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. *See* 20 C.F.R. § 501.2(c); *Donald R. Gervasi*, 57 ECAB ___ (Docket No. 05-1622, issued December 21, 2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).