

The issues are: (1) whether the Office properly terminated appellant's compensation benefits, effective January 25, 2004, on the grounds that she had no residuals or disability causally related to her accepted employment injury; and (2) whether appellant established that she continues to have disability related to her accepted employment injury. On appeal, appellant contends that the medical evidence of record establishes her continuing disability for work.

FACTUAL HISTORY

On November 3, 2000 appellant, then a 37-year-old flat sorter machine operator, filed a traumatic injury claim alleging that she injured her left shoulder on October 27, 2000 while lifting a tub of mail to place on a conveyer belt. She was treated at the Pitt County Hospital emergency room on November 3, 2000 and was diagnosed with a sprain of the left shoulder. Appellant was referred to Dr. Christopher C. Hasty, a Board-certified orthopedic surgeon, who noted that appellant had good shoulder strength and rotation, but that she experienced pain during part of the testing. Dr. Hasty interpreted x-rays of the left shoulder as showing subacromial narrowing and a Type II or III subacromial spur. He diagnosed appellant with impingement syndrome of the left shoulder. The Office accepted appellant's claim for left shoulder strain on January 2, 2001. Appellant received a light-duty assignment and appropriate compensation benefits.

On September 16, 2001 appellant was involved in a nonemployment-related automobile accident and sustained trauma to her head, neck and lower back.

On December 12, 2001 appellant underwent a functional capacity evaluation. The physical therapist, Lynn Forbes, indicated that appellant was functioning in the lower end of the medium work category. Appellant could lift 21 to 50 pounds on an occasional basis, 11 to 25 pounds on a frequent basis and 6 to 13 pounds on a constant basis. Ms. Forbes indicated that, if as appellant reported her job was in the heavy work category, a return to full duty was unlikely without accommodations.

On February 8, 2002 appellant returned to Dr. Hasty with complaints of shoulder pain. Dr. Hasty ordered a magnetic resonance imaging (MRI) scan of her left shoulder. On March 28, 2002 he reported the MRI scan to be normal. Dr. Hasty noted diffuse pain from her neck to shoulder region but did not notice any specific pain or tenderness in her anterior shoulder region. He was unsure what further treatment to offer given that the previous injections had not been helpful for the long term. On May 7, 2002 appellant returned to see Dr. Hasty with nonspecific complaints of shoulder and neck pain. He recommended that she follow up with Dr. Kevin Good, a Board-certified neurologist.

Dr. Good examined appellant on May 9, 2002 and found that she had general symptoms of joint and muscle pain and neurological symptoms of easy fatigability and nausea, weakness in arms and legs and stiffness and pain. He conducted electrophysiological studies of the left arm and shoulder, which were found to be normal. Dr. Good diagnosed probable myofascial pain syndrome in appellant's left neck and shoulder and indicated that it may have "evolved out of an injury at work and been reactivated or made worse by the motor vehicle accident."

By letter dated June 25, 2002, appellant requested that the Office authorize a change of physicians to Dr. Lisa Staton, an internist.¹ On July 31, 2002 Dr. Staton examined appellant and found that her left shoulder exhibited a limited range of motion and that she could not lift her hand above her head. She also noted diffuse tenderness on palpitation of the left shoulder. Dr. Staton diagnosed left shoulder impingement, which was causing chronic pain and was being

¹ Dr. Staton's Board certification status could not be established.

complicated by depression. She noted that appellant had sustained a shoulder injury from lifting a tub at work and that she was currently unable to perform her job duties because they involved lifting her hand above her head several times a day. Dr. Staton gave appellant four weeks of leave from work to allow her shoulder time to heal with a regimen of physical therapy and medication.

Dr. Staton extended appellant's period of disability to November 13, 2002, when she released her to return to work with the limitations of no pushing or pulling, and no more than 50 pounds of lifting and 4 hours of reaching above shoulder. The employing establishment offered a light-duty job; however, on February 11, 2003 the Office informed the employing establishment that the job offer did not meet appellant's physical limitations.

On May 1, 2003 Dr. Staton submitted a duty status report, Form CA-17, indicating that appellant could lift no more than 21 pounds and was limited to 4 hours of bending, twisting and fine manipulation. By letter dated July 23, 2003, the Office informed appellant that the employing establishment had been unable to identify a job that would meet her limitations and that it would begin to prepare her for other employment.

On September 18, 2003 the Office referred appellant for a second opinion evaluation to determine the extent and nature of her remaining injury-related disability. Appellant was seen by Dr. Noel B. Rogers, a Board-certified orthopedic surgeon, on November 7, 2003 for a second opinion examination. Dr. Rogers diagnosed chronic pain in appellant's left shoulder and noted tenderness in the left trapezius and biceps. He ordered and reviewed new x-rays of her shoulder, which were normal, and noted that Dr. Hasty had found a normal MRI scan in his March 23, 2002 report. In response to the Office's questions, Dr. Rogers indicated that her left shoulder strain had essentially resolved, as she had normal strength, reflexes and sensation. He opined that appellant's subjective complaints did not correspond with objective findings, especially as to her ability to reach over her head. Dr. Rogers was uncertain as to how much of her pain was linked to her nonemployment-related spinal injuries. He stated that, on the basis of her left shoulder, and not considering any back pain, appellant should be able to return to full duty or to a sedentary job and was in need of no further medical treatment.

On December 2, 2003 the Office notified appellant that it was proposing termination of her compensation benefits on the grounds that she was no longer disabled as a result of the accepted left shoulder strain. The Office found that the weight of the medical evidence rested with Dr. Rogers' report, as the treating physician, Dr. Staton, was not an orthopedic specialist and had not provided a medical report in over a year.

On December 29, 2003 appellant responded to the Office's proposed termination. She contended that the Office had not given her medical history and records adequate consideration. Appellant noted that the "tenderness" described by Dr. Rogers was the source of her shoulder pain, spasms and weakness. She indicated that she had strength in her shoulder because of her diligence in doing recommended exercises and taking medication to manage her pain. Appellant did not submit any medical reports.

By decision dated January 22, 2004, the Office terminated appellant's medical and wage-loss benefits effective January 25, 2004. In response to appellant's contention that her medical

file had been disregarded, the Office noted that Dr. Rogers was provided the complete medical file.

On January 11, 2005 appellant, by counsel, submitted a request for reconsideration. She argued that the Office's decision was based solely on the evidence of the second opinion physician, Dr. Rogers, and did not properly acknowledge a conflict in medical opinion with her physicians. Appellant contended that Dr. Rogers' finding that her condition had "essentially resolved" meant that it had not resolved completely, and that, as a consequence, she had a percentage of disability that was compensable. She argued that Dr. Rogers' opinion was of diminished probative value.

By decision dated March 24, 2005, the Office denied modification of the January 22, 2004 decision. It noted that Dr. Rogers' certification status had been determined prior to his engagement and that his report was internally consistent with the determination that appellant was no longer disabled for work due to her shoulder injury. The Office found that the medical evidence did not give rise to a conflict, as Dr. Hasty had found no objective evidence of pain when he released appellant from his care. Dr. Staton had provided no recent narrative report regarding the work injury. The Office affirmed that the weight of the medical evidence rested with Dr. Rogers.

On March 13, 2006 appellant submitted a request for reconsideration. She contended that the Office failed to accept as compensable all of the injuries and conditions that were causally related to her October 27, 2000 employment injury. In a November 25, 2005 report, Dr. Michael K. Nunn, an osteopath and a Board-certified psychiatrist,² stated that he had treated appellant for her psychiatric and chronic pain problems since August 7, 2002. He diagnosed major depression and cervical spine pain with left shoulder involvement. Dr. Nunn indicated that her chronic pain had worsened with time and developed into fibromyalgia. He stated that appellant's injuries were acquired in her work setting and were chronic, which rendered her unable to work.

By letter dated March 29, 2006, the Office requested information about appellant's September 16, 2001 motor vehicle accident. Appellant responded with a written statement about the incident. She also provided records from Dr. Brian Kean, a chiropractor, who treated her following her accident.

On May 26, 2006 the Office informed appellant that she had been scheduled for an examination with Dr. Ronald A. Summers, a Board-certified orthopedic surgeon, selected as the impartial medical specialist to resolve a conflict in medical opinion between Dr. Nunn and Dr. Rogers. The Office provided an addendum to the statement of accepted facts which stated that appellant had sustained trauma to her head, shoulders, lumbar and cervical areas in the motor vehicle accident. It noted that, in addition to her shoulder strain, she had an accepted workers' compensation injury for lumbar strain. The following conditions had not been accepted: depression, cervical strain, bilateral shoulder impingement, myofascial pain syndrome, bunectomy, fibromyalgia and degenerative disc disease.

² Dr. Nunn's osteopathic certification status could not be ascertained.

In a June 13, 2006 report, Dr. Summers provided the results of a physical examination, a review of appellant's medical history and responses to questions posed by the Office. He noted normal flexion, abduction and rotation of both shoulders. Dr. Summers stated that appellant had a full passive range of motion, but that there were complaints of pain at the outside limits. He noted no focal point of pain, no muscle atrophy and no soft tissue swelling, bruising, ecchymosis or discolorations. Dr. Summers reported that she felt discomfort on palpitation of the trapezius and paraspinal cervical muscles. He found strength and sensation to light touch to be normal. Dr. Summers did not find signs of impingement. He did not review any x-rays of appellant's shoulder. Dr. Summers opined that appellant had subjective complaints which were not substantiated by objective physical examination findings or a review of the provided records. He stated that appellant's shoulder strain had improved with physical therapy and should not have impeded her from returning to her usual occupation. Dr. Summers noted that her examination showed no limitations on functionality and indicated that her subjective complaints of pain were limited to only some motions, movements and strength testing. He stated that there was no relation between her current condition and the accepted employment injury of October 27, 2000.

By decision dated July 11, 2006, the Office denied modification of its March 24, 2005 decision. The Office found that the weight of the medical opinion evidence rested with Dr. Summers, the impartial medical specialist, who opined that appellant was not disabled from the job she held on the date of injury. The Office noted that appellant's complaints of pain and discomfort were not supported by physical findings of disability.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.³ The Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to the employment injury.⁴

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 appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁵

ANALYSIS -- ISSUE 1

Appellant's claim was accepted for a left shoulder strain. Following appellant's November 3, 2000 employment injury, she was treated by Dr. Hasty, a Board-certified orthopedic surgeon. On December 29, 2000 he diagnosed impingement of the left shoulder and noted that x-rays of her shoulder showed subacromial narrowing and a Type II or III subacromial spur. Dr. Hasty treated her with a cortisone shot. Appellant was in an automobile accident on September 16, 2001 and sustained trauma to her head, neck and lower back. When she sought treatment from Dr. Hasty on February 8, 2002 for ongoing shoulder pain he ordered an MRI

³ *Elaine Sneed*, 56 ECAB ____ (Docket No. 04-2039, issued March 7, 2005).

⁴ *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

⁵ *James F. Weikel*, 54 ECAB 690 (2003).

scan. The MRI scan results were reported as normal with no evidence of impingement. On examination, Dr. Hasty noted that appellant had diffuse pain in her neck and shoulder area, but found no specific pain or tenderness in her anterior shoulder. He released her from his care on May 7, 2002.

On May 9, 2002 appellant was examined by Dr. Good, a Board-certified neurologist, who found general symptoms of joint and muscle pain and neurological symptoms of easy fatigability, nausea, weakness in the extremities, stiffness and pain. Dr. Good's electrophysiological studies of the left arm and shoulder were reported as normal. He diagnosed "probable" myofascial pain syndrome in appellant's neck and shoulder on the left side, which he posited "may" have evolved out of her employment injury and been aggravated by her 2001 automobile accident.

On July 31, 2002, 18 months after the accepted employment injury, Dr. Staton, an internist, found that appellant's left shoulder had a limited range of motion and that she could not lift her hand above her head. She noted diffuse tenderness on palpitation of the left shoulder. Dr. Staton diagnosed left shoulder impingement, which was causing chronic pain and being complicated by depression. It does not appear that she made the impingement diagnosis based on objective x-ray or MRI scan evidence. Dr. Staton mentioned that appellant had a history of shoulder injury, but did not identify the type of injury sustained and did not state that it had caused appellant's current condition. She did not address the MRI scan obtained for Dr. Hasty or the electrodiagnostic studies of Dr. Good which were reported as normal. Dr. Staton provided no explanation of how appellant's current shoulder condition was related to her employment injury. Her report is not sufficient to prove that appellant sustained an impingement from her employment injury, accepted for shoulder strain. The Board notes that Dr. Staton's findings of shoulder pain cannot be directly connected to the accepted employment injury because they were made more than 18 months afterwards. Her report was not sufficiently rationalized to establish a causal relationship between appellant's shoulder pain and her accepted shoulder strain.

Thus, in order to determine the extent and degree of any employment-related disability or residuals, at the Office's request Dr. Rogers, a Board-certified orthopedic surgeon, conducted a second opinion examination of appellant on November 7, 2003. The examination included a review of her employment injury, the physical requirements of her position and a physical examination. Dr. Rogers found no residuals related to her accepted employment injury, as she had normal strength, reflexes and sensation in her left shoulder. He also noted the normal x-ray and MRI scan findings. Dr. Rogers opined that appellant's subjective complaints did not correspond to objective findings, especially in regards to the ability to reach over her head. He stated that some of her pain was likely linked to her nonemployment-related spinal injuries. Dr. Rogers concluded that, on the basis of her left shoulder, and not considering any back pain, appellant would be able to return to full duty or to a sedentary job and was in need of no further medical treatment. The Board finds that Dr. Rogers opinion, which is based on an accurate medical history and a thorough examination is sufficient to establish that appellant had no residuals or disability causally related to the October 27, 2000 left shoulder strain. The Board finds that the Office properly relied on Dr. Rogers' opinion, rather than Dr. Staton's, to establish that appellant had no residuals or disability from her employment injury because his opinion was based on a complete medical history, including diagnostic studies, and he provided rationale for his stated condition. Notably, he took into account the normal findings of the MRI scan

conducted by Dr. Hasty and the x-ray that he performed. Consequently, Dr. Rogers' report constitutes the weight of the medical evidence and establishes that appellant had no employment-related disability or residuals causally related to the October 27, 2000 left shoulder strain.

The Board finds that the Office properly terminated appellant's compensation benefits on the grounds that she had no residuals or disability causally related to the accepted shoulder strain.

LEGAL PRECEDENT -- ISSUE 2

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that she had disability causally related to her accepted injury.⁶ Appellant must submit rationalized medical evidence to establish the causal relationship between her continuing disability and the employment injury.⁷ To be rationalized, the opinion must be based on a complete factual and medical background of the claimant,⁸ and must be one of reasonable medical certainty,⁹ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

The Federal Employees' Compensation Act provides that, if there is a disagreement between a physician making an examination for the United States and the physician of the employee, the Secretary must appoint a third physician to make an examination.¹² Likewise, the implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser or consultant, the Office must appoint a third physician to make an examination. This is called a referee examination and the Office is required to select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case.¹³ It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background, must be given special weight.¹⁴

⁶ *Manuel Gill*, 52 ECAB 282 (2001).

⁷ *Id.*

⁸ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁰ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹¹ *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹² 5 U.S.C. §§ 8101-8193, 8123(a).

¹³ 20 C.F.R. § 10.321.

¹⁴ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

ANALYSIS -- ISSUE 2

The Office properly terminated appellant's benefits on January 25, 2004, based on the medical report of Dr. Rogers. Appellant challenged this termination on the grounds that residuals from her accepted employment injury continued to disable her for work. As the Office met its burden of proof to terminate wage-loss and medical compensation benefits, the burden shifted to appellant to establish continuing employment-related residuals or disability.

Appellant's treating physician, Dr. Nunn, an osteopath and a Board-certified psychiatrist, disagreed with Dr. Roger's findings in a report dated November 25, 2005. He stated that appellant's chronic pain had developed into fibromyalgia and was the cause of chronic depression. Dr. Nunn stated that these conditions were the result of the injury sustained at work.

The Board finds that the Office properly determined that there was a conflict of medical opinion as to whether appellant was still disabled from work due to residuals causally related to the accepted employment injury and properly selected an impartial medical specialist. On June 13, 2006 Dr. Summers, a Board-certified orthopedic surgeon selected as an impartial medical specialist, conducted a physical examination and reviewed appellant's full medical history related to her left shoulder. He found that her subjective complaints of pain for some shoulder movements were not substantiated by objective findings. Dr. Summers noted that appellant had full and normal functioning of her left shoulder. For these reasons, he opined that there were no residuals from the accepted left shoulder strain that would prevent appellant from returning to her date-of-injury position at the employing establishment.

The Board finds that the Office properly afforded the opinion of Dr. Summers the special weight of the evidence in resolving the conflict of opinion regarding the degree of appellant's disability. His opinion was rationalized and based on a full medical history and examination. As such it was entitled, under the Act, to be given special weight by the Office.

Appellant argued on appeal that the medical reports in the record establish that her disability was caused by her federal employment. However, the evidence in the record was considered by Dr. Summers when he rendered his opinion. The Board finds that all medical conflicts in the record were resolved by Dr. Summers' opinion.

The special weight of the medical evidence as represented by Dr. Summers establishes that appellant had no continuing disability or residuals causally related to the accepted injury of left shoulder strain. Thus, she has not met her burden of proof to establish continuing employment-related disability or residuals.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation benefits effective January 25, 2004 on the grounds that she had no residuals of disability causally related to her accepted employment injury. The Board further finds that appellant did not establish that she continued to have disability or residuals related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 11, 2006 is affirmed.

Issued: May 18, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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