

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

S.A., Appellant

and

**U.S. POSTAL SERVICE, BULK MAIL
CENTER, Cincinnati, OH, Employer**

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**Docket No. 07-2106
Issued: March 12, 2008**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 14, 2007 appellant, through counsel, filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated July 19, 2007 terminating her medical and wage-loss benefits for her December 12, 2005 employment injury as of July 18, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's wage-loss compensation and medical benefits for her December 12, 2005 employment injury effective July 18, 2007.

FACTUAL HISTORY

On March 6, 2002 appellant, then a 41-year-old part-time flexible mail handler, sustained traumatic injury to her right hip, back and neck in the performance of duty.¹ The Office accepted

¹ The Office assigned file number 09-2019021. On September 25, 2006 the Office doubled this claim with file number 09-2066676, with the former number as the master file number.

the claim for lumbar strain, aggravation of lumbar spondylolysis and trapezius/shoulder strain and accepted a March 20, 2002 recurrence of disability claim. Appellant returned to limited-duty work on June 7, 2002. The Office subsequently expanded her claim to include myalgia and myositis. On December 12, 2005 appellant sustained injury to her left hand, left arm, left shoulder, lower back, neck, head and spine when she slipped and fell on ice.² The Office accepted the claim for left shoulder contusion, lumbar strain/sprain, cervical strain/sprain and back contusion.

On March 6, 2006 Dr. Marc C. Schneider, a treating Board-certified orthopedic surgeon, related treating appellant's lumbar and cervical strains, back contusion and left shoulder contusion due to her December 12, 2005 employment injury. He opined that the conditions "represent a temporary disability and have aggravated appellant's underlying condition of lumbar spondylolysis and chronic cervical sprain/strain." Dr. Schneider released appellant to five to six hours of work per day with restrictions effective March 27, 2006. On May 18, 2006 the Office received his March 6, 2006 report which listed June 10, 2006 as the date she could return to work with restrictions.

On July 14, 2006 Dr. E. Gregory Fisher, a second opinion Board-certified orthopedic surgeon, noted the accepted conditions as left shoulder contusion, back contusion, cervical strain/sprain and lumbar strain/sprain. A physical examination revealed some lower back pain on palpation and no muscle atrophy, spasm or muscle guarding over the lower extremities. Dr. Fisher reported that appellant had "some decreased range of motion in flexion and extension of the neck as well as rotation from pain over the cervical region." The left shoulder physical examination showed restricted range of motion and pain over the shoulder area. Dr. Fisher indicated that appellant had "negative impingement signs over the left shoulder." He found that appellant no longer had any residuals from her accepted December 12, 2005 employment injury as she sustained a temporary aggravation. Dr. Fisher noted the injuries sustained on December 12, 2005 were "all soft tissue injuries and would have resolved and healed themselves in a matter of a few days up to a few months." However, he opined that appellant continued to have residuals of her accepted March 6, 2002 employment injury. Dr. Fisher noted limitation on range of motion due to pain and that there were "no objective neurological findings over the upper or lower extremities." He reported that appellant's subjective complaints of lower back and neck pain "are similar to the subjective findings she was having prior to the injury of 2005 from the injury in 2002." On the work capacity evaluation (Form OWCP-5c), Dr. Fisher noted that appellant had no work restrictions as a result of her December 12, 2005 employment injury. The restrictions noted on the form were due to her March 6, 2002 employment injury.

In a July 10, 2006 report, Dr. Schneider diagnosed chronic lumbar and cervical strains/sprains. Since appellant's December 12, 2005 employment injury, he stated that she "has had difficulty returning to full-time employment." Magnetic resonance imaging (MRI) scans of the cervical and lumbar spines revealed cervical lordosis loss with C5 and C6 mild degenerative disc changes, Grade 1 anterolisthesis and L5-S1 facet arthropathy with spondylolysis. Dr. Schneider opined that appellant would "continue to have difficulties with her condition for an indeterminate amount of time" and released her to work on June 28, 2007 with restrictions.

² The Office assigned file number 09-2066676.

On October 20, 2006 the Office referred appellant to Dr. Stephen J. Goldfarb, a Board-certified orthopedic surgeon, to resolve a conflict in the medical opinion evidence between Dr. Schneider, appellant's treating physician, and Dr. Fisher, the second opinion Board-certified orthopedic surgeon, on the issue of whether appellant continued to have residuals from her December 12, 2005 employment injury.

In a November 14, 2006 report, Dr. Goldfarb reviewed the medical evidence, statement of accepted facts and listed findings on physical examination. He concluded that appellant no longer had any residuals from her accepted December 12, 2005 employment injury. Dr. Goldfarb opined that both her left shoulder contusion and lumbar sprain resolved within two to three months of her employment injury. As to appellant's ongoing lumbar spine pain, he attributed this to her chronic lumbar spondylosis. Dr. Goldfarb reported that he found no evidence of a cervical strain on her examination or contusion to her back. He opined that appellant's chronic degenerative disc disease was unrelated to her accepted December 12, 2005 employment injury.

In a January 9, 2007 addendum, Dr. Goldfarb noted that he reviewed additional medical records as requested by the Office. He stated that appellant's degenerative lumbar spine changes were due to the natural progression of the degenerative process rather than an aggravation of her preexisting condition. Dr. Goldfarb concluded that appellant's myofascial pain was unrelated to the December 12, 2005 employment injury as "this probably has been ongoing for several years."

On March 30, 2007 the Office issued a notice of proposed termination of benefits under file number 09-02066676.

On May 2, 2007 the Office received appellant's letter disagreeing with the proposal to terminate her compensation. Appellant contended that she continued to experience residuals from her December 12, 2005 employment injury, including headaches and numbness and cramping in her left extremities.

In May 18, 2007 supplemental report, Dr. Goldfarb reviewed additional medical records, including a March 27, 2007 electromyograph (EMG) study. He stated that his opinion was unchanged. Dr. Goldfarb noted that the EMG study was unremarkable and none of the other medical records forwarded by the Office gave him reason to change any of the opinions expressed in his prior reports.

By decision dated July 19, 2007, the Office finalized the termination of appellant's benefits effective July 18, 2007.³ It noted that her March 6, 2002 employment injury claim remained open.⁴

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁵ Having determined that an employee has a disability causally related to his 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.⁶ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁷ 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.⁸

ANALYSIS

The Office accepted that appellant sustained a left shoulder contusion, lumbar strain/sprain, cervical strain/sprain and back contusion as a result of the December 12, 2005 employment injury. Therefore, it has the burden of proof to justify the termination of compensation and medical benefits for these conditions. The Office terminated appellant's compensation and medical benefits based on the report of Dr. Goldfarb, the impartial medical examiner. The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits for her December 12, 2005 employment injury.

Appellant's treating Board-certified orthopedic surgeon, Dr. Schneider, diagnosed chronic lumbar and cervical strains/sprains due to the December 12, 2005 employment injury, which had not resolved. He released her to work with restrictions for five to six hours per day. Dr. Fisher, a second opinion Board-certified orthopedic surgeon, opined that any residuals from appellant's accepted lumbar and cervical strains/sprain, back contusion and left shoulder contusion had resolved. In order to resolve the conflict, the Office referred appellant to an impartial medical examiner, Dr. Goldfarb. After conducting a physical examination and

³ On July 23, 2007 appellant's counsel filed a request for a telephone hearing before an Office hearing representative. It is well established that the Board and the Office may not have concurrent jurisdiction over the same case and those Office decisions which change the status of the decision on appeal are null and void. 5 U.S.C. § 8101(2). Therefore, any decision issued by an Office hearing representative during the pendency appellant's appeal before the Board is null and void. *Douglas E. Billings*, 41 ECAB 880, 895 (1990).

⁴ The Board notes that appellant filed a claim for a schedule award on March 17, 2006. It notes that the record does not contain a final decision regarding appellant's schedule award claim.

⁵ *T.F.*, 58 ECAB ____ (Docket No. 06-1186, issued October 19, 2006); *George A. Rodriguez*, 57 ECAB ____ (Docket No. 05-490, issued November 18, 2005).

⁶ *J.M.*, 58 ECAB ____ (Docket No. 06-661, issued April 25, 2007); *Elaine Sneed*, 56 ECAB 373 (2005).

⁷ *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Furman G. Peake*, 41 ECAB 361 (1990).

⁸ *T.P.*, 58 ECAB ____ (Docket No. 07-60, issued May 10, 2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

reviewing appellant's medical reports, Dr. Goldfarb concluded that she 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 lumbar sprain and shoulder contusion resolved within two to three months of her injury. Dr. Goldfarb also found no evidence of a cervical strain or contusion. He opined that appellant was capable of working within restrictions, which were unrelated to her accepted December 12, 2005 employment injury. Where a case is referred to an impartial medical examiner, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁹ 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. Goldfarb.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation and medical benefits effective July 18, 2007 on the basis that she no longer had any disability or residuals due to her accepted December 12, 2005 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 19, 2007 is affirmed.

Issued: March 12, 2008
Washington, DC

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

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

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

⁹ *J.M.*, 58 ECAB ____ (Docket No. 06-661, issued April 25, 2007); *Richael O'Brien*, 53 ECAB 234 (2001).