

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

S.B., Appellant

and

**DEPARTMENT OF JUSTICE, FEDERAL
BUREAU OF PRISONS, Atlanta, GA, Employer**

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**Docket No. 09-1187
Issued: December 16, 2009**

Appearances:

Alan J. Shapiro, 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 April 1, 2009 appellant, through his representative, filed a timely appeal from a January 20, 2009 merit decision of the Office of Workers' Compensation Programs terminating his compensation benefits. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office properly terminated appellant's medical and wage-loss benefits effective January 21, 2009 on the grounds that the residuals of his employment-related injury had resolved.

FACTUAL HISTORY

On November 24, 2003 appellant, then a 35-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on October 29, 2003 he sustained a left shoulder injury. He fell on his shoulder while attempting to restrain an inmate. The Office accepted the claim for left shoulder bursitis. Appellant stopped work on November 14, 2003 and

did not return. On January 29, 2004 he underwent a left shoulder rotator cuff repair. On February 3, 2004 the Office placed appellant on the periodic rolls.

Medical evidence of record established that appellant could return to a sedentary, light-duty position but was unable to return to his date-of-injury position due to residuals of the employment injury. The Office subsequently referred appellant to vocational rehabilitation.

By letter dated September 6, 2007, the Office requested that appellant submit a narrative report from a treating physician regarding his current disability and continuing residuals from the employment injury. On October 23, 2007 it again requested that he provide a medical report addressing the status of his employment injury and current work restrictions. Appellant did not respond with any additional medical evidence.

The Office determined that a second opinion evaluation of appellant's continuing employment-related residuals and disability was required. It referred him, together with his record and a statement of accepted facts, to Dr. Alexander N. Doman, a Board-certified orthopedic surgeon.

In a September 18, 2008 medical report, Dr. Doman reviewed appellant's medical history. Physical examination revealed a well-healed surgical scar anteriorly. No glenohumeral instability was present. Rotator cuff strength was excellent. Dr. Doman noted mild decreased range of motion of the shoulder with a forward flexion of 150 degrees and an external and internal rotation of 80 degrees. He stated that appellant's x-ray film was excellent with no indication of degenerative arthritis and an excellent shaped acromion following acromioplasty. Dr. Doman opined that appellant's accepted condition had resolved. He stated that appellant's operative findings noted no significant tear of the rotator cuff and that the operative procedure went smoothly without complications. Dr. Doman advised that appellant's subjective complaints of pain were not supported by objective findings as his strength was excellent and he demonstrated good range of motion in the shoulder.

On December 18, 2008 the Office notified appellant of its proposal to terminate his medical benefits and wage-loss compensation. It found that Dr. Doman's opinion that appellant did not continue to experience a medical condition or disability related to his employment represented the weight of the medical evidence. The Office advised appellant that he had 30 days to submit additional evidence. Appellant did not respond.

By decision dated January 20, 2009, the Office finalized the termination of medical and wage-loss benefits effective January 21, 2009.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without

¹ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

establishing that disability ceased or that it was no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that an employee no longer has residuals of an employment-related condition which require further medical treatment.⁴

ANALYSIS

The Office accepted that appellant sustained left shoulder bursitis due to his October 29, 2003 employment injury. The issue is whether it properly terminated his wage-loss and medical benefits on January 21, 2009 on the grounds that the residuals of his employment injury had resolved.

The Office referred appellant to Dr. Doman for a second opinion evaluation regarding his continuing disability and residuals from the employment-related injury. In a September 18, 2008 medical report, Dr. Doman described a complete physical examination revealed good rotator cuff strength and only mild decreased range of motion of the shoulder. He also reviewed x-ray film showing an excellent acromion shape following acromioplasty and no indication of degenerative arthritis. Dr. Doman noted that appellant's operative findings did not indicate a significant tear of the rotator cuff and that the operative procedure went smoothly without complications. He opined that appellant's employment injury had resolved. Dr. Doman noted that appellant's subjective complaints of pain were not supported by the objective findings, which included excellent strength and good range of motion of the shoulder.

The Board finds that Dr. Doman's medical report is comprehensive, well rationalized and based on an accurate factual and medical history.⁵ There is no other contemporaneous medical evidence establishing that appellant remained disabled or continued to experience residuals of his employment-related injury. Thus, Dr. Doman's medical opinion constitutes the weight of the medical evidence.⁶

The Board finds that Dr. Doman's September 18, 2008 report established that appellant no longer had residuals of his work-related injury. The Office properly relied on this report in terminating appellant's wage-loss compensation and medical benefits.⁷

² *J.M.*, 58 ECAB ____ (Docket No. 06-661, issued April 25, 2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ *T.P.*, 58 ECAB ____ (Docket No. 07-60, issued May 10, 2007); *Larry Warner*, 43 ECAB 1027 (1992).

⁴ *Supra* note 3; *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *See K.E.*, 60 ECAB ____ (Docket No. 08-1461, issued December 17, 2008).

⁶ *See E.J.*, 59 ECAB ____ (Docket No. 08-1350, issued September 8, 2008).

⁷ *See id.*

CONCLUSION

The Board finds that the Office properly terminated appellant's medical and wage-loss benefits effective January 21, 2009 on the grounds that the residuals of his employment-related injury had resolved.

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2009
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