

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of REBECCA O. BOLTE and U.S. POSTAL SERVICE,  
POST OFFICE, Akron, OH

*Docket No. 03-788; Oral Argument Held June 13, 2003;  
Issued October 14, 2003*

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Appearances: *Alan J. Shapiro, Esq.*, for appellant; *Thomas G. Giblin, Esq.*,  
for the Director, Office of Workers' Compensation Programs.

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant had any disability or injury related residuals after October 12, 1999 causally related to her accepted employment-related right shoulder strain.

This case has previously been before the Board on appeal. In a November 15, 2001 decision, the Board found that the weight of the medical evidence rested with Dr. Moses Leeb, a Board-certified orthopedist and Office of Workers' Compensation Programs' referral physician. The Board determined that as Dr. Leeb's April 5, 1999 report established that appellant ceased to have any disability or condition causally related to her April 23, 1998 employment injury, the Office met its burden of proof in terminating appellant's compensation benefits effective October 12, 1999. The Board further found that appellant had failed to submit sufficient evidence to create a conflict with the report of Dr. Leeb.<sup>1</sup> The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.

Following the Board's November 15, 2001 decision, appellant, through her attorney, requested reconsideration on March 7, 2002 and submitted additional evidence. By decision dated May 29, 2002, the Office denied modification of its last merit decision dated October 12, 1999. Appellant appealed this decision to the Board on June 14, 2002 and later, by letter dated July 30, 2002, requested that the appeal be dismissed. In an order dismissing appeal dated August 23, 2002, the Board granted appellant's request to dismiss the appeal.<sup>2</sup>

On October 17, 2002 appellant requested reconsideration and submitted additional evidence. In a decision dated January 13, 2003, the Office denied modification of its prior decisions finding that the medical evidence submitted was insufficient to overcome the weight of

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<sup>1</sup> Docket No. 01-628 (issued November 15, 2001).

<sup>2</sup> Docket No. 02-1582 (issued August 23, 2002).

the Office referral physician, Dr. Leeb, a Board-certified orthopedist. The present appeal follows.

The Board finds that appellant has failed to meet her burden of proof in establishing any continuing disability on or after October 12, 1999 causally related to her accepted employment-related right shoulder strain.

As previously found by the Board, the Office met its burden of proof to terminate appellant's compensation benefits effective October 12, 1999. The burden therefore shifted to appellant to establish that she had further disability or medical residuals causally related to her accepted employment injury.<sup>3</sup> 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.<sup>4</sup>

Appellant submitted additional medical evidence, including a report dated February 22, 2002, from Dr. Robert H. Bell, a Board-certified orthopedic surgeon, who noted that he had first examined appellant on September 30, 1999 and stated that appellant has had occasional paresthesias, dysesthesias and a snapping sensation around the inferior scapula following her work injury. He set forth the findings from his 1999 examination along with a limited description of his findings on March 5, 2002. Dr. Bell stated that he was uncertain of the etiology of appellant's discomfort but was of the opinion she was not a surgical candidate. He further stated that appellant's current problems began when she injured her shoulder in April 1998.

In a report dated April 12, 2002, Dr. Steven B. Lippitt, a Board-certified orthopedic surgeon, noted that he had previously examined appellant on July 20, 1998 and his impression at that time was posterior shoulder pain principally about the scapular muscles. He advised that appellant had been experiencing persistent symptoms since then which were fairly status quo. A January 18, 2002 computerized tomography (CT) scan of the right scapula was negative. Dr. Lippitt noted a number of objective findings on examination, including a mild tenderness about the right trapezius and positive tenderness about the inferior angle of the scapula and levator and rhomboid region with no supra or infraspinatus atrophy and the acromioclavicular joint was nontender. He diagnosed chronic posterior scapular right shoulder pain with snapping

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<sup>3</sup> See *Talmadge Miller*, 47 ECAB 673 (1996); *George Servetas*, 43 ECAB 424, 430 (1992).

<sup>4</sup> See *Maurissa Mack*, 50 ECAB 498 (1999); *Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

scapula and opined that, consistent with his July 1998 evaluation, there were no surgical indications. He further agreed with Dr. Bell's opinion that appellant's current problems began when she injured her shoulder in April 1998.

Office notes dated February 5, May 23 and July 16, 2002 from Dr. Bell indicated that appellant had snapping at the inferior margin of the right scapula. Surgical procedures were eventually discussed. In his July 16, 2002 note, Dr. Bell stated that it appeared as though appellant's current symptoms were very similar to what she originally had with her injury. However, no further explanation was provided with the comment.

Reports from Dr. Michael L. Pryce, a Board-certified orthopedic surgeon, were submitted. In those reports, Dr. Pryce indicated that appellant had a subluxating shoulder or a dislocation of the shoulder as the magnetic resonance imaging (MRI) arthrogram showed no evidence of a glenoid labrum tear or a rotator cuff tear. He advised that there was a capsular laxity of some kind and it was well within the realm of reasonable medical probability that the injury appellant sustained on April 23, 1998 was responsible for the pathology now present in appellant's shoulder, noting that the capsule was stretched out and there was anterior and superior instability in the shoulder, which would require arthroscopy with capsular shrinkage. Shoulder x-ray showed a little bit of elevation of the humeral head on the anterior/posterior view. He further stated that, although the MRI scan showed no injury to the glenoid labrum, a laxated capsule cannot be seen on an MRI scan. Dr. Pryce advised that his physical examination should constitute objective evidence as he does not make decisions to operate strictly through the use of x-rays or MRI scans. He stated that her shoulder had a visible, audible and palpable click and could be maneuvered in a way for the head to sublux. In a February 23, 2000 report, Dr. Pryce noted that, although appellant could actively replicate the instability in her shoulder, he had difficulty replicating it passively.

In a June 28, 2002 report, Dr. Rex W. Dinsmore, a family practitioner, provided a history of the injury. On examination, extreme tenderness was exhibited over the posterior right shoulder and inferior and lateral right scapula. Range of motion of the shoulder was moderately limited with abduction and anterior elevation of the right arm. Neurological findings were normal except for paresthesia of the right index finger. Grip strength in both hands was noted as being normal. Dr. Dinsmore opined that appellant sustained significant ligament strain injuries to her right shoulder and right scapula which were compatible with the history of the work injury. He further opined that her injuries were permanent due to the amount of time since her injury and her ongoing symptoms.

In a September 16, 2002 medical report, Dr. Paul D. Coleman, a family practitioner, stated that appellant has had continued popping and snapping of the right scapula since her work injury. He opined that, during the work injury, her right scapula gave way and the muscles around the scapula were injured, stating that most likely she had a muscle tear at the time which did not resolve because the muscle was torn completely. Dr. Coleman did not make any current objective findings but opined that appellant's current problems were related to her work injury and were permanent.

In an October 8, 2002 medical report, Dr. Vladimir Djuric, Board-certified in physical medicine and rehabilitation, noted the history of injury and the course of appellant's medical

treatment. Examination findings were presented. He diagnosed thoracic and right rib dysfunction affecting T2 through T6 with the fourth segment and rib being the most affected and opined that this resulted in secondary right shoulder dysfunction. Dr. Djuric advised that the work injury of April 23, 1998 was a sprain/strain injury to the upper thoracic spine and ribs. He stated that there are various degrees of sprains and, in all likelihood, appellant's diagnosed shoulder strain was in fact a thoracic and rib strain as well. Dr. Djuric opined that this was a rather severe strain considering the concomitant popping sensation noted at the time of injury. He suspected that a rib capsular (ligamentous) tear allowed a rib to sublux and this was responsible for her severe, acute pain, noting that such an event, usually has a substantial degree of associated muscle spasm or tightness and this can affect the nerves that transverse the shoulder, just above the ribcage. Dr. Djuric continued this grouping of nerves, known as the brachial plexus, can be affected by neck and shoulder dysfunction or thoracic outlet syndrome.<sup>5</sup>

The Board finds that the medical evidence submitted is not sufficient to meet appellant's burden of proof of establishing continuing disability on or after October 12, 1999 due to her employment injury nor do they create a conflict with the April 5, 1999 report of Dr. Leeb, the Office referral physician.

Neither the February 22, 2002 medical report from Dr. Bell nor the April 12, 2002 report from Dr. Lippitt contain a well-rationalized opinion that appellant's current condition is related to appellant's work-related injury. Dr. Bell stated that he was uncertain of the etiology of appellant's discomfort. Although Dr. Bell advised her current problems began following the work injury and Dr. Lippitt agreed with this, neither physician offered medical rationale supported by objective evidence to support appellant's complaints of her shoulder condition or explain why her shoulder condition had been ongoing since the date of the work-related injury. Dr. Bell offered no medical rationale supported by objective evidence to support appellant's subjective complaints of her shoulder condition and provided no explanation regarding why appellant's shoulder condition had been ongoing since the date of the work-related injury. This evidence is therefore insufficient to create a conflict with the opinion of Dr. Leeb.

The office notes and medical reports from Dr. Michele L. Hatherill, a Board-certified orthopedic surgeon, Dr. Pryce, Dr. Kenneth Bulen, Board-certified in family practice, and Dr. Bell fail to offer any medical reasoning in support of a causal relationship between appellant's current condition and her work-related injury. Dr. Bulen specifically stated that the issue of causal relationship was in question as well as the etiology of appellant's current complaints. In his office notes and February 22, 2002 report, Dr. Bell failed to offer any medical rationale supported by objective evidence to support appellant's subjective complaints of her shoulder condition or explain how or why appellant's current shoulder condition had been ongoing since the date of the work-related injury. Although Dr. Hatherill provided some objective findings in her office notes and reports, she did not provide sufficient medical reasoning in support of a causal relationship between appellant's current condition and her work-

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<sup>5</sup> A May 1, 1998 x-ray of the right shoulder was normal. A January 25, 2000 MRI scan of the cervical spine indicated no cervical condition. An October 11, 2002 MRI scan of the thoracic spine revealed mild thoracic degenerative disc disease, minimal bulging at other levels, no evidence of high grade canal or foraminal stenosis, no cord impingement, with a normal appearing spinal cord and a right convexed scoliosis to the thoracic spine. None of these reports provide an opinion regarding causal relationship.

related injury. Likewise, although Dr. Pryce provided some objective evidence for his diagnosis of subluxating shoulder and provided some rationale as to why an MRI scan would not pick up a laxated capsule, he also failed to offer any medical reasoning in support of causal relationship between appellant's current condition and her work-related injury. The Board has long held that medical reports not containing rationale on causal relationship are entitled to little probative value.<sup>6</sup> For the above reasons, these reports are insufficient to meet appellant's burden.

Although Dr. Dinsmore made findings regarding appellant's right shoulder condition and opined that she suffered ligament strain injuries to her right shoulder and right scapula which were compatible with her work injury, no medical rationale was offered for his opinion on causal relationship. Dr. Coleman, failed to reference any diagnostic test of record to support his finding that appellant "most likely" had a muscle tear at the time of the injury which did not resolve and were the cause of appellant's current problems. This opinion is of little probative value as Dr. Coleman used speculative language<sup>7</sup> in describing his findings of a muscle tear. Additionally, Dr. Coleman's finding of a muscle tear as being the cause of appellant's current condition contradicts the March 17, 2002 report which advised that the MRI arthrogram showed no evidence of a muscle tear. The Board has held that medical opinions based on an incomplete history are of little probative value.<sup>8</sup> Thus such opinion is not based on a complete and accurate medical background of appellant and is not sufficient to establish that appellant continued to be disabled after October 12, 1999 due to her employment injury.

In his October 8, 2002 report, Dr. Djuric opined that the shoulder injury was a sprain/strain injury to the upper thoracic spine and ribs. He further stated that he suspected that a rib capsular tear allowed a rib to sublux and this was responsible for her severe, acute pain. Dr. Djuric, however, made no attempts to explain how his objective findings comported with the objective diagnostic testing already of record of appellant's right shoulder. As noted the March 17, 2002 MRI arthrogram showed no evidence of a muscle tear. Additionally, he failed to provide any medical explanation as to how appellant's condition at the time of injury was more than a strain, particularly in light of the diagnostic testing which fails to support his conclusion. Thus such opinion is not based on a complete and accurate medical background of appellant and is not sufficient to meet appellant's burden.<sup>9</sup>

As appellant has not provided the necessary rationalized medical opinion evidence to establish any continuing employment-related condition, she has not met her burden of proof for this aspect of her claim.

During oral argument, appellant's attorney claimed that the Office should have accepted a rib/thoracic condition as part of the original claim. The record indicates that the original emergency room record of April 23, 1998 contained diagnosis of acute somatic dysfunction and acute right arm strain with paresthesias secondary to the first diagnosis. The Board finds,

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<sup>6</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>7</sup> See *Vaheh Mokhtarians*, 51 ECAB 190, 195 n.8 (1999); *William S. Wright*, 45 ECAB 498, 504 (1994).

<sup>8</sup> *Frank Luis Rembisz*, 52 ECAB 147 (2000).

<sup>9</sup> *Id.*

however, that none of the medical evidence submitted contains a consistent diagnosis of appellant's condition. Only Dr. Djuric diagnosed thoracic and right rib dysfunction which affected T2 through T6. Dr. Bell indicated that appellant had snapping at the inferior margin of the right scapula with occasional parasthesias, but he was uncertain of the etiology. Dr. Lippitt diagnosed chronic posterior scapular right shoulder pain with snapping scapula. Dr. Hatherille diagnosed chronic periscapular pain of questionable etiology. Dr. Pryce indicated that appellant had a subluxating shoulder or dislocation of the shoulder. Dr. Bulen stated that questions remained pertaining to the etiology of appellant's current condition, while Drs. Dinsmore and Coleman provided no diagnosis on appellant's current condition. Moreover, as previously discussed, these medical opinions fail to contain adequate medical rationale to support their conclusions and are thus of limited probative value. Accordingly, the Board finds that the evidence of record fails to support that the Office erred in failing to accept a rib or thoracic condition as resulting from the original injury.

The decisions of the Office of Workers' Compensation Programs dated January 13, 2003 and May 29, 2002 are affirmed.

Dated, Washington, DC  
October 14, 2003

Alec J. Koromilas  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member