

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

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**CHARLES V. ROSASCHI, Appellant**

**and**

**DEPARTMENT OF JUSTICE, FEDERAL  
BUREAU OF INVESTIGATION, Melville, NY,  
Employer**

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**Docket No. 05-878  
Issued: January 23, 2006**

*Appearances:*

*Paul Kalker, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge

**JURISDICTION**

On March 7, 2005 appellant filed a timely appeal of the February 16, 2005 merit decision of the Office of Workers' Compensation Programs, which denied modification of the July 30, 2004 decision terminating benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.<sup>1</sup>

**ISSUE**

The issue is whether the Office properly terminated appellant's wage-loss compensation and medical benefits effective July 30, 2004 on the basis that he recovered from his March 23, 2000 employment injury.

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<sup>1</sup> The record on appeal contains evidence received after the Office issued the February 16, 2005 decision. The Board may not consider evidence that was not before the Office at the time it rendered its final decision. 20 C.F.R. § 501.2. Appellant may submit such evidence to the Office with a request for reconsideration. See 20 C.F.R. §§ 10.605, 10.606 and 10.607 (1999).

### **FACTUAL HISTORY**

On March 23, 2000 appellant, then a 50-year-old special agent, was involved in an employment-related motor vehicle accident. He was waiting for the traffic signal to turn green when a school bus collided with the rear of his vehicle. The force of the collision thrust appellant's vehicle into the rear of the vehicle ahead of him and he reportedly lost consciousness. Appellant stopped working the day of his injury.<sup>2</sup> The Office accepted the claim for head contusion and cervical strain.

On January 19, 2002 appellant filed a claim (Form CA-7) for compensation for the period March 23, 2000 to June 15, 2002. He subsequently filed additional claims for compensation through May 31, 2003.

In a report dated January 2, 2003, appellant's treating physician, Dr. Isaac Cohen, a Board-certified orthopedic surgeon, noted a history of a March 23, 2000 motor vehicle accident and a 1991 lumbar laminectomy. Dr. Cohen initially examined appellant on June 10, 2002 for complaints of significant pain in the cervical spine area and right upper extremity. He indicated that on follow-up examination appellant's cervical radiculopathy and right shoulder pain had not changed dramatically and he continued to have marked limitation of motion of the cervical spine. Dr. Cohen also noted that the right shoulder revealed signs of impingement with weakness, stiffness and tightness. A November 3, 2002 right shoulder magnetic resonance imaging (MRI) scan revealed findings consistent with a superior labral tear. Dr. Cohen diagnosed status post March 23, 2000 motor vehicle accident cervical sprain syndrome, C4-5 radiculopathy and right shoulder labral tear. He attributed appellant's cervical and right shoulder conditions to the March 23, 2000 employment injury. Dr. Cohen further indicated that appellant was totally disabled and he would never be able to resume his former duties as an agent because of the significant restriction of use of the right upper extremity and cervical spine area.

The Office referred appellant for a second opinion examination by Dr. Richard S. Goodman, a Board-certified orthopedic surgeon. He examined appellant on January 29, 2003 and provided two reports dated February 10 and 18, 2003. Dr. Goodman found that appellant was disabled due to degenerative changes of the right acromioclavicular joint, which was not employment related. Because of this condition appellant was unable to perform his prior duties as a special agent. He could, however, perform sedentary work, light work or moderate work. Dr. Goodman further stated that the minimal cervical sprain appellant suffered on March 23, 2000 had resolved.

Dr. Cohen, the treating physician, provided a February 26, 2003 report in which he diagnosed chronic cervical sprain, status post lumbar laminectomy, right shoulder labral tear right, acromioclavicular joint degenerative arthritis and impingement syndrome. He stated that appellant had significant residual disabilities involving the cervical spine, with chronic cervical sprain and radiculopathy. Dr. Cohen also noted significant loss of functional capacity of the right upper extremity as demonstrated by the labral tear. He further indicated that appellant had reached maximum medical improvement.

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<sup>2</sup> Appellant retired from service effective March 31, 2000.

The Office found a conflict in medical opinion based on the differing views of Dr. Cohen and Dr. Goodman. Accordingly, the Office referred appellant for an impartial medical evaluation. In a report dated March 26, 2003, Dr. Jerrold M. Gorski, a Board-certified orthopedic surgeon and impartial medical examiner, found no residuals with respect to appellant's March 23, 2000 cervical strain. On physical examination appellant's head and neck motions were full and unaccompanied by complaints of pain. Examination of the right shoulder revealed mild atrophy of the supraspinatous fossa and a positive impingement sign with pain referred to the superior medial scapular. Dr. Gorski also reviewed recent cervical and right shoulder MRI scans. The cervical MRI scan was normal and the November 3, 2002 right shoulder MRI scan revealed findings suggestive of a labral tear. While appellant no longer had a cervical strain, Dr. Gorski agreed with Dr. Cohen's diagnosis of right shoulder impingement. He further indicated that this condition may or may not have been related to appellant's motor vehicle accident. But unlike Dr. Cohen, Dr. Gorski did not believe appellant had reached maximum medical improvement and he recommended a series of right shoulder cortisone injections. According to Dr. Gorski, appellant's right shoulder condition currently precluded him from performing his duties as a special agent. He believed, however, that the cortisone injections might improve appellant's ability to handle a firearm and, thus, enable him to resume his prior duties. If appellant's condition did not improve with the injections, Dr. Gorski indicated that he was nonetheless capable of performing a wide range of limited- and light-duty assignments of a sedentary nature.

The Office sought clarification from Dr. Gorski regarding whether appellant's right shoulder condition was causally related to the March 23, 2000 motor vehicle accident. In a supplemental report dated July 29, 2003, Dr. Gorski unequivocally stated that appellant's right shoulder condition was not related to the work injury of March 23, 2000. He noted that appellant had "clear evidence of an underlying degenerative condition in the shoulder." Dr. Gorski explained that this condition may have been temporarily aggravated by the motor vehicle accident, but any ongoing complaints were due to the underlying, preexisting condition.

On September 16, 2003 the Office issued a notice of proposed termination of compensation and medical benefits. The Office found that the impartial medical examiner's March 26 and July 29, 2003 reports represented the weight of the medical evidence of record. Appellant was afforded 30 days to submit any additional evidence or argument. Appellant's counsel responded on October 9, 2003 noting his objection to the proposed termination of benefits; however, counsel did not submit any additional evidence on appellant's behalf. By decision dated July 30, 2004, the Office terminated appellant's medical benefits and wage-loss compensation.

In a November 8, 2004 request for reconsideration, appellant's counsel challenged the Office's reliance on the impartial medical examiner's findings, but he did not submit any additional medical evidence. In a decision dated February 16, 2005, the Office denied modification of the July 30, 2004 decision.

### **LEGAL PRECEDENT**

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>3</sup> Having determined that an employee has a disability causally related to his or her 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.<sup>4</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>5</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.<sup>6</sup>

### **ANALYSIS**

The Office determined that a conflict of medical opinion existed based on the opinions of Dr. Cohen and Dr. Goodman. Therefore, the Office properly referred appellant to an impartial medical examiner.<sup>7</sup> Dr. Gorski, the impartial medical examiner, reported that appellant's March 23, 2000 cervical strain had resolved. He further found that appellant's current right shoulder condition was unrelated to the March 23, 2000 employment injury. The Board finds that the Office properly relied on the impartial medical examiner's March 26 and July 29, 2003 reports in determining that appellant's March 23, 2000 employment injury had resolved. Dr. Gorski's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed appellant's medical records. Dr. Gorski also reported accurate medical and employment histories. Accordingly, the Office properly accorded special weight to the impartial medical examiner's findings.<sup>8</sup> As the weight of the medical evidence establishes that appellant's March 23, 2000 employment injury has resolved, the Office properly terminated appellant's wage-loss compensation and medical benefits.

### **CONCLUSION**

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective July 30, 2004.

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<sup>3</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>4</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>5</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>6</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

<sup>7</sup> The Federal Employees' Compensation Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

<sup>8</sup> In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 16, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board