

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation effective September 1, 2004 on the grounds that she had no residuals of her May 25, 2004 employment injury after that date; and (2) whether she met her burden of proof to establish that she had reflex sympathetic dystrophy (RSD), complex regional pain syndrome or any other medical condition after September 1, 2004 which was related to the May 25, 2004 employment injury.

FACTUAL HISTORY

On June 1, 2004 appellant, then a 38-year-old mail carrier, filed a traumatic injury claim alleging that she sustained a left arm injury on May 25, 2004 when a heavy tub of mail she was pulling shifted to the left and pulled on her left arm.¹ She stopped work on May 26, 2004 and returned to her regular work for the employing establishment on June 1, 2004.

Appellant stopped work for part of her work shift on June 9, 2004 but she returned to work the next day in a limited-duty position with restrictions recommended by Dr. Berent J. Krumm, her attending Board-certified family practitioner,² who diagnosed left shoulder strain and tendinitis.

The Office accepted that appellant sustained left shoulder tendinitis and paid compensation for medical treatment.

The findings of the July 13, 2004 electromyogram (EMG) and nerve conduction testing of appellant's arms revealed normal results other than evidence of mild, early carpal tunnel syndrome of the left arm. The results of the July 30, 2004 magnetic resonance imaging (MRI) scan revealed mildly increased signal intensity in the critical zone of the left rotator cuff consistent with tendinitis.

In an August 4, 2004 report, Dr. Daniel D. Weed, an attending Board-certified orthopedic surgeon, indicated that appellant's MRI scan was unremarkable and stated: "There is some rotator cuff tendinitis but I think it is mild." Dr. Weed indicated that appellant discussed a color change in her left hand and fingers, as she "broke all the bloods vessels." He indicated that this did not make any sense and that he thought she was describing some type of color change that could be a sympathetic response. Dr. Weed stated that appellant could be developing RSD and complex regional pain syndrome and stated: "More evidence to that is the fact that she still wears her sling and she pads her sling to protect her left arm from any type of bumping or contact. Dr. Weed indicated that he would keep appellant on restrictions and see her in a month.

In an August 31, 2004 report, Dr. Weed indicated that he had an extensive discussion with appellant's case manager regarding her condition. He concluded that she had been coached with respect to the manner in which she described her condition during examinations. He stated: "Taking that into consideration [appellant's] examination has always been normal and it is only her subjective symptoms that even remind me that this could be RSD."

In a September 1, 2004 report, Dr. Weed stated that appellant came into his office with her left arm extended at the elbow, abducted at the shoulder and extended at the wrist. He noted:

"This is a very unusual position and [appellant] holds it in that position the whole time that I am in there. I can take her through a complete range of motion and I

¹ Appellant estimated that the tub weighed at least 40 pounds but stated that she could not know the actual weight of the tub without weighing it.

² Appellant received the same pay in her limited-duty job as she did in her date-of-injury job.

can do a complete examination and her examination is basically normal. [Appellant] does have some very mild swelling of her hand but it is mild.

“From an orthopedic standpoint [appellant] has nothing anatomically or organically wrong.

“[Appellant] does have swelling but that certainly does not constitute RSD. If she had RSD I would not expect her to come in here with an abducted shoulder, extended elbow or extended wrist. That just does not make sense.

“The only [thing] that makes sense is [appellant] wants to make an impression on me and it made the wrong impression. It makes me realize that [she] is trying to manipulate the entire situation.

“There are certainly no color changes that are consistent with RSD. There is no sweating consistent with RSD. That mild amount of sweating does not concern me at all. From my standpoint I have nothing further to offer orthopedically and I see no reason to keep [appellant] on any restrictions. I will release her to full duty and I will see her back as needed.”

In a September 1, 2004 note, Dr. Weed stated that appellant could return to full duty on September 2, 2004. In a September 14, 2004 note, he stated after the examination of September 1, 2004, that he did not believe that she had any orthopedic or medical condition resulting from the accepted work injury of left shoulder tendinitis. Dr. Weed noted that he had released appellant to full duty without restrictions and stated: “It is my opinion that the accepted work-related injury of shoulder tendinitis, date of injury May 25, 2004, has resolved.”³

By decision dated September 15, 2004, the Office terminated appellant’s disability and medical benefits compensation effective September 1, 2004. It found that the opinion of Dr. Weed showed that she had no residuals of her May 25, 2004 employment injury after that date.

Appellant alleged that she continued to have disability after September 1, 2004 due to RSD and complex regional pain syndrome which were related to her May 25, 2004 employment injury.

In a September 16, 2004 report, Dr. Jay G. Robinson, an attending Board-certified neurologist, stated that appellant presented with complaints of excruciating pain in the left arm with virtually any activity. He stated that a full sensory examination could not be performed on her left arm due to pain complaints but that her sensation was otherwise intact. Dr. Robinson stated that appellant wondered whether she had RSD and noted, “I think it is a possibility but as I told her it is very difficult to prove this diagnosis one way or the other. He stated that her left arm did not appear discolored or particularly swollen, but that she did have some symptoms associated with RSD including paresthesias, cold intolerance, swelling and inability to use the

³ The record also contains a September 2, 2004 report in which Dr. Krumm stated that appellant complained of left arm pain, paresthesias and swelling.

arm. Dr. Robinson stated that sometimes RSD would occur “in the setting of an apparently innocuous injury.”⁴

In a report dated June 6, 2005, Dr. Gabor B. Racz, an attending Board-certified anesthesiologist, stated that appellant reported that she had left neck and arm pain since May 2004 when her left hand was trapped on the handle of a 98-pound tub of mail and jerked her left arm to the ground. He noted that she held her left arm in a neutral position flexed at the elbow and diagnosed sympathetically maintained pain of the left upper extremity, left biceps tendon sheath pain and left suprascapular neuritis.

By decision dated September 6, 2005, the Office affirmed its September 15, 2004 decision. It found that its original termination was proper and that appellant had not submitted sufficient medical evidence to show that she had RSD, complex regional pain syndrome or any other medical condition after September 1, 2004 which was related to the May 25, 2004 employment injury.

Appellant submitted a December 14, 2005 report in which Dr. Racz discussed her medical treatment and posited that she had RSD and complex regional pain syndrome which responded in the short-term to sympathetic blocks. Dr. Racz stated: “To deny her care is simply not medically reasonable.” He indicated that he had a great deal of experience with diagnosing RSD, complex regional pain syndrome.

By decision dated May 17, 2006, the Office affirmed its September 6, 2005 decision.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees’ Compensation Act,⁵ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁶ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁷ The Office’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

According to Office procedure, it is not necessary for the Office to issue a pretermination notice for termination of disability compensation when a claimant is not on the periodic rolls and it is not necessary to issue a pretermination notice for termination of medical benefits

⁴ The record contains reports from early 2005 in which Dr. Robinson indicated that appellant continued to suffer with and have difficulties with RSD. It does not appear that he provided a diagnosis that she actually had this condition.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁷ *Id.*

⁸ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

compensation when an attending physician indicates that further medical treatment is not necessary.⁹

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained left shoulder tendinitis on May 25, 2004. It terminated her future disability and medical benefits compensation effective September 1, 2004 finding that the opinion of Dr. Weed, an attending Board-certified orthopedic surgeon, showed that she had no residuals of her May 25, 2004 employment injury after that date.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Weed. The opinion of Dr. Weed establishes that appellant had no residuals of her May 25, 2004 employment injury after September 1, 2004.

In September 1 and 14, 2004 reports, Dr. Weed concluded that the left shoulder tendinitis that appellant sustained on May 25, 2004 had resolved and that she had no residuals of that condition after September 1, 2004. He determined that she could return to full duty without restrictions on September 2, 2004. Dr. Weed stated that despite having some mild swelling of appellant's left hand when he examined her on September 1, 2004 appellant's examination findings were essentially normal, including range of motion findings which showed no limitation of the left arm. He indicated that she presented in a "very unusual position" with her left arm extended at the elbow, abducted at the shoulder and extended at the wrist. Dr. Weed stated that he did not feel appellant had RSD or complex regional pain syndrome given the position she was able to hold her arm and the lack of appropriate color changes and sweating of the skin.

The Board has carefully reviewed the opinion of Dr. Weed and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Weed's opinion is based on a proper factual and medical history and he provided medical rationale for his opinion by explaining that appellant's extremely limited findings on examination did not show that she had any remaining signs of the May 25, 2004 employment injury which caused left shoulder tendinitis. He considered whether appellant had other conditions affecting the left arm, such as RSD or complex regional pain syndrome, but concluded that those conditions could not be supported by her symptoms.¹⁰

The Office did not issue a pretermination notice before terminating appellant's disability and medical benefits compensation, but issuance of such a notice was not necessary because appellant was not on the periodic rolls. Dr. Weed determined that further medical treatment was not necessary.¹¹

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6a-d(1) (March 1997).

¹⁰ The record also contains a September 2, 2004 report in which Dr. Krumm, an attending Board-certified family practitioner, stated that appellant complained of left arm pain, paresthesias and swelling, but he provided no indication that these symptoms were related to the May 25, 2004 employment injury.

¹¹ See *supra* note 9 and accompanying text.

For these reasons, the Office properly terminated appellant's compensation effective September 1, 2004.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had a employment-related disability which continued after termination of compensation benefits.¹² The Board has held that a medical opinion not fortified by medical rationale is of little probative value.¹³ Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁴

ANALYSIS -- ISSUE 2

After the Office's September 15, 2004 decision terminating appellant's compensation effective September 1, 2004, appellant submitted additional medical evidence which she felt showed that she was entitled to compensation after September 1, 2004 due to residuals of her May 25, 2004 employment injury. She claimed that she continued to have disabling and complex regional pain syndrome due to the May 25, 2004 employment injury. Given that the Board has found that the Office properly relied on the opinion of Dr. Weed in terminating appellant's compensation effective September 1, 2004, the burden shifts to appellant to establish that she is entitled to compensation after that date.

The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that she had residuals of her May 25, 2004 employment injury after September 1, 2004. The evidence does not show that she had RSD, complex regional pain syndrome or any other medical condition after September 1, 2004 which was related to the May 25, 2004 employment injury.

Appellant submitted a September 16, 2004 report in which Dr. Robinson, an attending Board-certified neurologist, addressed her question regarding whether she had RSD. Dr. Robinson stated that she had some symptoms associated with RSD including paresthesias, cold intolerance, swelling and inability to use the arm, but noted that her left arm did not appear discolored or particularly swollen. He ultimately concluded that he could not provide an opinion on the matter because "it is very difficult to prove this diagnosis one way or the other." Dr. Robinson's reports would not support appellant's claim as he provided no opinion that she

¹² *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

¹³ *See George Randolph Taylor*, 6 ECAB 986, 988 (1954).

¹⁴ *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988).

had disabling RSD or complex regional pain syndrome and did not indicate that she had any employment-related condition.¹⁵

In a June 6, 2005 report, Dr. Racz, an attending Board-certified anesthesiologist, diagnosed sympathetically maintained pain of the left upper extremity, left biceps tendon sheath pain and left suprascapular neuritis. However, he provided no indication that these conditions were employment related. In a December 14, 2005 report, Dr. Racz posited that appellant had RSD and complex regional pain syndrome which responded in the short-term to sympathetic blocks. Although he indicated that to “deny her care is simply not medically reasonable” he did not provide a clear indication that the diagnosed conditions were related to appellant’s employment.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant’s compensation effective September 1, 2004 on the grounds that she had no residuals of her May 25, 2004 employment injury after that date. The Board further finds that appellant did not meet her burden of proof to establish that she had RSD, complex regional pain syndrome or any other medical condition after September 1, 2004 which was related to the May 25, 2004 employment injury.

¹⁵ See *supra* note 14 and accompanying text. The record contains reports from early 2005 in which Dr. Robinson indicated that appellant continued to suffer with and have difficulties with RSD, but it does not appear that he provided a diagnosis that she actually had this condition.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 17, 2006 and September 6, 2005 decisions are affirmed.

Issued: January 4, 2007
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