

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

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**H.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Rochester, NY, Employer**

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**Docket No. 09-512  
Issued: October 2, 2009**

*Appearances:*

*Robert R. Snashall, 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

JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 15, 2008 appellant filed a timely appeal from May 19 and September 19, 2008 merit decisions of the Office of Workers' Compensation Programs terminating her compensation and medical benefits and denying her claim for consequential injuries. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

**ISSUES**

The issues are: (1) whether the Office properly terminated appellant's compensation benefits effective April 18, 2008 on the grounds that she no longer had any residuals or disability causally related to her employment-related injuries; and (2) whether appellant has established that she sustained a shoulder or neck condition as a consequence of her accepted injury.

On appeal, appellant's representative does not contest that the evidence established that appellant's accepted conditions had resolved by April 18, 2008. However, he contends that the evidence establishes that appellant sustained injuries to her neck and shoulder as a result of the accepted incident.

## **FACTUAL HISTORY**

In a March 11, 2008 traumatic injury claim, appellant, then a 51-year-old letter carrier, alleged that she sustained injuries to her head, torso and upper extremities when she slipped and fell on the ice while delivering mail on March 10, 2008. The Office accepted her claim for concussion without loss of consciousness; contusions of the chest wall and left elbow; and a black eye.

Appellant was treated by Dr. George W. Anstadt, Board-certified in the area of occupational medicine. In a report dated March 10, 2008, Dr. Anstadt stated that appellant injured her left knee, left elbow and left eyebrow when she slipped on the ice and fell on that date. In March 10, 2008 progress notes, he diagnosed resolved closed head injury and indicated that appellant was experiencing left shoulder pain due to the impact of the fall, from the elbow through the shoulder. Dr. Anstadt recommended a magnetic resonance imaging (MRI) scan to rule out a glenoid tear. On March 14, 2008 he noted that appellant's condition had improved significantly, except for a left shoulder contusion and tenderness in the left anterior ribs. Dr. Anstadt found full range of motion (ROM) and strength in the left shoulder.

In an April 18, 2008 report, Dr. Anstadt opined that all of appellant's injury-related conditions had resolved, but for persistent discomfort and clicking in the left shoulder. Examination revealed a nontender spine, with normal ROM without discomfort; no ecchymosis of the face; and normal ROM in the left knee and elbow. On examination of the left shoulder, Dr. Anstadt found full range of motion with pain on abduction; mild anterior and moderate posterior glenoid tenderness; mild tenderness in the supraspinatus portion of the rotator cuff; and mild tenderness in the trapezius. He recommended an MRI scan to rule out a glenoid tear and provided work restrictions which precluded lifting more than 15 pounds due to left shoulder pain.

On May 9, 2008 Dr. Anstadt stated that appellant had no pain or tenderness in her ribs, spine or knees; however, she was experiencing mild supraspinatus tenderness in the left rotator cuff area. He stated that the acromioclavicular (AC) joint discomfort was the only significant residual of appellant's complex injury. Dr. Anstadt indicated that appellant could work eight hours with restrictions, which included no lifting, pushing or pulling more than 10 pounds. The record contains a report of a May 15, 2008 MRI scan of the left shoulder, reflecting the absence of a rotator cuff or labial tear and a preexisting mild hypertrophic change at the AC joint, with lateral acromial downsloping.

In a decision dated May 19, 2008, the Office terminated appellant's compensation and medical benefits effective April 18, 2008 on the grounds that her accepted conditions had resolved as of that date. It noted that it had not accepted a shoulder condition and that the evidence did not establish that her claimed shoulder condition was causally related to the accepted injury.

In a May 23, 2008 report, Dr. Anstadt diagnosed a resolving left shoulder AC sprain. He stated that the shoulder sprain was previously masked by other injuries, including a C6 left-sided disc herniation. Dr. Anstadt's examination revealed full shoulder ROM and a nontender left rotator cuff.

In a narrative report dated May 23, 2008, Dr. Anstadt stated that appellant did not have shoulder pain at the time of her March 10, 2008 injury. However, appellant had a significant chest wall injury, which limited the use and motion of her left arm and led to a condition similar to a frozen shoulder. She began experiencing left shoulder pain several weeks after the accepted injury when she began trying to use her left arm. Dr. Anstadt opined that the left shoulder injury was causally related to her accepted fall.

On June 16, 2008 appellant requested reconsideration. She alleged that she developed left shoulder pain due to elbow impact and chest wall compression resulting from the accepted injury.

In an undated report received by the Office on June 23, 2008, Dr. Todd Stein, an orthopedic surgeon, diagnosed rotator cuff sprain and tenderness. He stated that appellant had injured her left knee, chest wall and elbow when she fell at work on March 10, 2008. Examination revealed shoulder stiffness, weakness and mild tenderness. Dr. Stein opined that appellant's shoulder pain was due to the March 10, 2008 fall, and that the stiffness was secondary to disuse resulting from injury-related pain.

Appellant submitted reports from Dr. Anstadt for the period May 23 through July 7, 2008. On May 23, 2008 Dr. Anstadt stated that appellant's left shoulder injury was resolving. He indicated that he realized for the first time on that date that appellant probably had C6-7 disc herniation with C7 radiculopathy. On May 30, 2008 Dr. Anstadt stated that appellant's March 10, 2008 work injury was the cause of her left shoulder AC joint strain and her left-sided disc herniation with nerve root compression. On June 20, 2008 he opined that appellant's left shoulder and neck conditions had essentially resolved, although she experienced left arm pain at times. On July 11, 2008 Dr. Anstadt released appellant to regular duty. He diagnosed left rotator cuff sprain and stated that appellant continued to experience left shoulder pain and stiffness. Dr. Anstadt indicated by placing a checkmark in the "yes" box, that appellant's shoulder condition was causally related to her employment. He opined that appellant's cervical disc, head, rib and left knee conditions had resolved.

The record contains physical therapy notes for the period May 9 through July 28, 2008. The record also contains a May 5, 2008 MRI scan report.

In a decision dated September 19, 2008, the Office denied modification of its May 19, 2008 decision. It found that the medical evidence established that appellant's accepted conditions had resolved as of April 18, 2008. The Office further found that the evidence was insufficient to establish that the accepted injury caused or aggravated appellant's cervical or left shoulder condition.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>1</sup> After it has determined that an employee has disability causally related to her federal employment, the Office may not terminate compensation without

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<sup>1</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

establishing that the disability has ceased or that it is no longer related to the employment.<sup>2</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>3</sup>

As used in the Act, the term "disability" means incapacity because of an injury in employment to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. The general test in determining loss of wage-earning capacity is whether the employment-resulted impairment prevents the employee from engaging in the kind of work she was doing when she was injured.<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, which requires further medical treatment.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that the Office met its burden of proof to establish that appellant was no longer disabled and that her accepted conditions had resolved by April 18, 2008. Therefore, the Office properly terminated appellant's compensation and medical benefits.

The evidence reflects that appellant was not disabled as of April 18, 2008. The Office accepted appellant's claim for concussion without loss of consciousness, contusions of the chest wall and left elbow and a black eye. The medical evidence of record submitted prior to the May 19, 2008 decision consisted of MRI scan reports and reports from appellant's treating physician. On April 18, 2008 Dr. Anstadt reviewed the history of injury and treatment and opined that all of appellant's accepted conditions had resolved. He provided detailed examination findings supporting his conclusion. Dr. Anstadt's report does not reflect that appellant was disabled; rather, he opined that appellant was able to work with minimal restrictions due to left shoulder pain, namely that she lift no more than 15 pounds. Follow-up reports through May 9, 2008 also reflect his opinion that appellant was able to work eight hours per day with restrictions. The Board notes that the restrictions imposed were not causally related to appellant's accepted condition, but rather were related to a shoulder condition. Therefore, any inability to perform the duties of her date-of-injury job resulting from her shoulder condition would not be considered "disability" under the Act.<sup>7</sup>

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<sup>2</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>3</sup> *See Del K. Rykert*, 40 ECAB 284 (1988).

<sup>4</sup> *Frazier V. Nichols*, 37 ECAB 528 (1996).

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

<sup>6</sup> *Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, *supra* note 5.

<sup>7</sup> *See Frazier V. Nichols*, *supra* note 4.

The Board finds that Dr. Anstadt's April 18, 2008 well-rationalized report represents the weight of medical evidence and establishes that appellant was no longer disabled due to her accepted injury as of April 18, 2008. Appellant did not submit any medical reports from a physician who, on the basis of a complete and accurate factual and medical history, concluded that she was totally disabled as of April 18, 2008 due to residuals of her accepted injury.

The evidence also establishes that appellant's accepted conditions had fully resolved as of Dr. Anstadt's April 18, 2008 examination. Dr. Anstadt's findings revealed a nontender spine, with normal ROM without discomfort; no ecchymosis of the face; and normal ROM in the left knee and elbow. He opined that all of appellant's injury-related conditions had resolved, but for persistent discomfort and clicking in the left shoulder. Dr. Anstadt noted shoulder pain on abduction; mild anterior and moderate posterior glenoid tenderness; mild tenderness in the supraspinatus portion of the rotator cuff; and mild tenderness in the trapezius. He recommended an MRI scan to rule out a glenoid tear and provided work restrictions which precluded lifting more than 15 pounds due to left shoulder pain. On May 9, 2008 Dr. Anstadt stated that the only significant residual from her accepted injury was AC joint discomfort. However, as appellant's claim was not accepted for a shoulder condition, associated pain and work restrictions to accommodate the shoulder condition are not injury related. Moreover, the record does not contain a medical report received prior to the Office's termination of benefits which explains how appellant's shoulder condition was causally related to the accepted injury. As the evidence establishes that appellant no longer suffered residuals from her accepted employment injury, the Board finds that the Office properly terminated her medical benefits.<sup>8</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. Once the work-connected character of any injury has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause and so long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable under the circumstances.<sup>9</sup>

Proceedings under the Act are not adversarial in nature, and while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>10</sup>

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<sup>8</sup> The Board notes that the Office terminated appellant's benefits without having provided notice of an intent to terminate. However, Office procedures provide that notice is not required to terminate benefits if the claim has not been placed on the periodic rolls. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6(c) (March 1997).

<sup>9</sup> See *Robert J. Wescoe*, 54 ECAB 162 (2002).

<sup>10</sup> *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard*, 53 ECAB 430 (2002); *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

## ANALYSIS -- ISSUE 2

The Office accepted appellant's claim for concussion without loss of consciousness, contusions of the chest wall and left elbow and a black eye. Although he stated that appellant's accepted conditions had resolved as of April 18, 2008, Dr. Anstadt opined that appellant developed shoulder and neck conditions as a result of her chest wall and elbow injuries. The Board has held that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.<sup>11</sup> The Board finds that this case is not in posture for decision regarding whether appellant sustained a shoulder or neck condition as a consequence of her accepted injury.

The medical evidence of record, which consisted primarily of reports from appellant's treating physician, supports appellant's claim that her shoulder and neck conditions were causally related to the accepted injury. On March 14, 2008 four days after the date of injury, Dr. Anstadt noted that appellant had a left shoulder contusion. In his April 18, 2008 report, he opined that all of appellant's injury-related conditions had resolved, but for persistent discomfort and clicking in the left shoulder. Dr. Anstadt provided examination findings and recommended an MRI scan to rule out a glenoid tear. On May 9, 2008 he stated that appellant was experiencing mild supraspinatus tenderness in the left rotator cuff area and opined that the AC joint discomfort was the only significant residual of her complex injury. While these reports do not address causal relationship, they do reflect the existence of a shoulder condition immediately following the accepted injury.

On May 23, 2008 Dr. Anstadt diagnosed a resolving left shoulder AC sprain. He stated that, as the shoulder sprain was previously obfuscated by other injuries, including a C6 left-sided disc herniation, it was unrecognized. Dr. Anstadt indicated that appellant did not have shoulder pain at the time of her March 10, 2008 injury. However, appellant had a significant chest wall injury, which limited the use and motion of her left arm and led to a condition similar to a frozen shoulder. She began experiencing left shoulder pain several weeks after the accepted injury when she began trying to use her left arm. Dr. Anstadt opined that the left shoulder injury was causally related to her accepted fall. On May 30, 2008 he stated that appellant's March 10, 2008 work injury was the cause of her left shoulder AC joint strain and her left-sided disc herniation with nerve root compression. On July 11, 2008 Dr. Anstadt diagnosed left rotator cuff sprain and indicated by placing a checkmark in the "yes" box, that appellant's shoulder condition was causally related to her employment. The Board has previously found that a report that addresses causal relationship with a checkmark, without a medical rationale explaining how the work event caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.<sup>12</sup> However, in this case, the opinion expressed by the physician is supported by his treatment of appellant's injuries and is consistent with the opinion expressed in previous reports.

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<sup>11</sup> See *Robert J. Wescoe*, *supra* note 9.

<sup>12</sup> See *Calvin E. King, Jr.*, 51 ECAB 394 (2000); see also *Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

Dr. Stein diagnosed rotator cuff sprain and tenderness, stating that appellant had injured her left knee, chest wall and elbow when she fell at work on March 10, 2008. Examination revealed shoulder stiffness, weakness and mild tenderness. Dr. Stein opined that appellant's shoulder pain was due to the March 10, 2008 fall, and that the stiffness was secondary to disuse resulting from injury-related pain. While he did not provide sufficient rationale for his opinion, his report provides support for appellant's claim that her shoulder condition was caused by the March 10, 2008 accepted injury.

The Board notes that, while none of the reports of appellant's attending physicians is completely rationalized, they are consistent in indicating that her shoulder and neck conditions were causally related to her accepted injury, and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet her burden of proof to establish her claim, they raise an uncontroverted inference between appellant's claimed conditions and the accepted employment incident, and are sufficient to require the Office to further develop the medical evidence and the case record.<sup>13</sup> On remand the Office shall obtain a rationalized opinion from a qualified physician as to whether appellant's shoulder and neck conditions are causally related to the accepted incident, and shall issue an appropriate decision in order to protect her rights of appeal.

Appellant's representative contends that Dr. Anstadt's failure to identify the shoulder and neck condition immediately following the accepted event should not be reason to deny expansion of appellant's claim. The Board agrees that a delayed diagnosis is not determinative, particularly if the conditions were consequential to the original accepted conditions. However, the medical evidence of record is presently insufficient to make such a determination and requires further development.

### **CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation benefits effective April 18, 2008 on the grounds that she no longer had any residuals or disability causally related to her accepted employment injuries. The Board further finds that the case is not in posture for a decision as to whether appellant developed a neck or shoulder condition as a consequence of her accepted injury.

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<sup>13</sup> See *Virginia Richard*, *supra* note 10; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' September 19 and May 19, 2008 decisions are affirmed in part and set aside in part. The case is remanded to the Office for action consistent with the terms of this decision.

Issued: October 2, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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