

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

M.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sacramento, CA, Employer**

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**Docket No. 09-646
Issued: October 6, 2009**

Appearances:
James A. Birt, 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 January 6, 2009 appellant, through her representative, filed a timely appeal from the April 14 and December 5, 2008 merit decisions of the Office of Workers' Compensation Programs, which affirmed the termination of her compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation for a June 11, 2003 left shoulder and cervical muscle strain; and (2) whether appellant established that she has residuals or disability causally related to the June 11, 2003 injury.

FACTUAL HISTORY

On June 11, 2003 appellant, then a 51-year-old casual clerk, sustained an injury in the performance of duty: "Coworker hit me with a cage. Hit me on my left side of body." On June 19, 2003 she described the incident this way: "Was working in my regular job when I turned around and a truck had pushed carts (cage on wheels) my way. To avoid them falling on

me I tried to prevent that by pushing them with my left arm.” She returned to modified duty until her assignment was terminated on June 27, 2003. The Office accepted her claim for left shoulder/arm strain and cervical strain. Appellant received compensation for wage loss on the periodic rolls.

The Office referred appellant, together with her medical record and a statement of accepted facts, to Dr. Alice Martinson, a Board-certified orthopedic surgeon, for an evaluation of her injury-related disability. On January 29, 2008 Dr. Martinson related the history of appellant’s work injury and her current complaints. She reviewed appellant’s extensive medical records and described findings on physical examination. Appellant demonstrated at least 60 degrees cervical rotation when turning to face her daughter and demonstrated considerable lumbar spinal motion in undressing and dressing. Upon request, she demonstrated essentially no motion in any direction in her cervical or lumbar spine. Appellant was diffusely tender to pressure in the muscle masses of the neck, shoulder girdles, upper arms, thighs, back, buttocks, calves and forearms. She actively resisted all efforts at straight leg raising when supine, although Dr. Martinson was able to obtain a reasonably normal range of motion of both hips when appellant was distracted. Voluntary efforts with manual muscle testing were highly variable and submaximal throughout.

Dr. Martinson reported that the work incident appellant described could certainly have resulted in some acute cervical and shoulder girdle sprains. But appellant’s persistent complaints were disproportionate to the objective physical findings and had escalated significantly after she quit work. Dr. Martinson noted that approximately one year after the work injury, appellant was found to have metastatic ovarian carcinoma. Although appellant reported being told that everything was all right, Dr. Martinson had strong fears about that impression, especially since appellant now had unilateral lower limb swelling.

Dr. Martinson diagnosed status post resection of metastatic ovarian carcinoma and total body pain, etiology undetermined. It was her opinion that none of appellant’s current complaints were related to the June 11, 2003 work injury. Dr. Martinson advised that appellant’s ongoing complaints of pain, fatigue and weakness were, instead, the consequences of her metastatic ovarian carcinoma and not the consequences of an injury episode four and a half years prior, which resulted in temporary muscle strain. There was nothing about the episode that could have had any aggravating effect on her malignant disease. Dr. Martinson stated:

“Give the size of the tumor identified at the time of her MRI [magnetic resonance imaging scan] one year after the injury, that tumor had most likely been present for some time, maybe even prior to her date of injury. Ovarian carcinoma is typically silent until the volume of tumor and the ascites begin to produce secondary symptomatology. The first mention of that secondary symptomatology in the medical records provided to me was in May 2004.”

Dr. Martinson found that appellant was incapable of any employment and that her disability was due solely to her nonindustrial ovarian carcinoma. It was noteworthy, she stated, that appellant participated in a functional capacity evaluation approximately six weeks prior the identification of her ovarian carcinoma and was deemed unable to tolerate employment at that time.

On March 5, 2008 Dr. Patrick Rhoades, an attending Board-certified physiatrist with a subspecialty in pain medicine, disagreed with Dr. Martinson. He noted that appellant's complaints of pain was consistent since her industrial injury. Dr. Rhoades related how the injury occurred and stated that she had quite significant neck, shoulder and back pain. Prior to the industrial injury, appellant never had any of the pain she later experienced in her legs, neck and shoulder. Dr. Rhoades acknowledged ovarian cancer after the injury but explained that her gynecologic oncologist found no spread of the cancer beyond the ovary based on extensive staging. He believed that it was highly unlikely that a chronic back and hip disability was related to her early stage, now clinically not evident, ovarian cancer. Dr. Rhoades opined that Dr. Martinson was in complete contradiction to the oncologist, who felt appellant was completely improved from the ovarian surgery. Dr. Rhoades added:

“It is my feeling that the neck and back pain were completely from [appellant's] industrial injury. [Appellant] never had any pain prior to her industrial injury. Since that time her pain has persisted. I realize [appellant] had ovarian cancer. However, I disagree completely with Dr. Martinson. I agree with her treating surgeon, Dr. Vikas Mahavni, who feels that the chronic back and hip disability is not related to her early stage ovarian cancer tumor, which was removed. I can see no way that her neck and upper back pain would be related to her ovarian cancer. I cannot state how much disagreement I am in with Dr. Martinson. There is no basing fact for what Dr. Martinson stated and I think there is no rationale given what her surgeon stated and certainly as far as the neck and shoulder pain why would anyone feel that was due to ovarian cancer.”

In a decision dated April 14, 2008, the Office terminated appellant's compensation for the June 11, 2003 muscle strains. It found that the weight of the medical evidence rested with Dr. Martinson. Dr. Rhoades' opinion was insufficient to create a conflict in medical opinion because he offered no medical rationale to support his opinion that the need for treatment or continued disability was related to the June 11, 2003 work injury. The Office noted that Dr. Rhoades relied on the opinion of Dr. Mahavni, whose report was never submitted.

On April 28, 2008 Dr. Mahavni, a Board-certified obstetrician and gynecologist with a subspecialty in oncology, reported that appellant had no evidence of residual disease with respect to her ovarian cancer. This was based on an October 25, 2007 assessment and examination of her, at which time she was approximately 2.5 years postcompletion of chemotherapy for early stage (1C) mucinous ovarian cancer. Dr. Martinson had no reason to believe that any such residual could exist to place undue pressure on appellant's back or spine.

On March 14, 2008 Dr. James H. Rhee, a Board-certified physiatrist with a subspecialty in pain medicine, related appellant's history and current symptoms. He described his findings on physical examination and reviewed appellant's medical records. Dr. Rhee diagnosed chronic whole back pain after industrial injury. He advised that her lumbar spine MRI scan was of little clinical significance: “A leading consideration is that of cervical, thoracic and lumbosacral strain, with postural dysfunction.” Dr. Rhee concluded that causation appeared consistent with the reported mechanism of injury, with likely little contribution from nonindustrial factors or her cancer. He stated the prevailing evidence for appellant's continued pain and disability issues remained on the industrial side.

On May 5, 2008 Dr. Benjamin J. Remington, a Board-certified neurosurgeon, reported that appellant was not a surgical candidate. He noted that she was very clear that she did not have pain until her injury and was very clear that the injury was witnessed. "Therefore, it seems reasonable to me that this may all be related."

On September 10, 2008 Dr. Rhoades reported that appellant presented with lumbar pain on the left radiating to the left buttock. Appellant also had hip and ankle pain on the left. Dr. Rhoades diagnosed lumbago and low back pain.

On December 5, 2008 the Office reviewed the merits of appellant's claim and denied modification of its April 14, 2008 decision. It found that the weight of the medical evidence rested with Dr. Martinson. While the medical evidence submitted with the request disagreed with her report, there was no medical rationale to support the opinions expressed that the need for treatment or continued disability was related to the work injury of June 11, 2003.

LEGAL PRECEDENT -- ISSUE 1

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.¹ Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ The inadequacy or absence of a report in support of continuing benefits is not sufficient to support termination and benefits should not be suspended for that reason.⁴

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁵

ANALYSIS -- ISSUE 1

The Office accepted that the June 11, 2003 work incident caused a muscle strain in appellant's left shoulder and neck. Before it may terminate compensation for those particular medical conditions, the Office has the burden to establish by the weight of the medical evidence that appellant no longer suffers from the left shoulder or cervical strain she sustained on June 11, 2003.

¹ 5 U.S.C. § 8102(a).

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.0812.8(c)(1) (June 2003).

⁵ 5 U.S.C. § 8123(a).

The Office sought a second opinion from Dr. Martinson, a Board-certified orthopedic surgeon, on the extent of appellant's injury-related disability. The Office provided Dr. Martinson with appellant's medical record and a statement of accepted facts. Dr. Martinson examined appellant on January 29, 2008 and made some observations about her effort, conscious or not, that called into question the validity of her subjective complaints, in particular, as it related to the accepted soft tissue muscle strains. Appellant demonstrated essentially no motion in any direction in her cervical spine and gave highly variable and submaximal efforts with manual muscle testing.

Dr. Martinson considered the mechanism of injury and allowed that it could have resulted in muscle strains, but strains that were at best temporary as the injury occurred four and a half years prior. Having reviewed the medical record, she noted that appellant's complaints were disproportionate to her objective physical findings and had escalated after she stopped work. Dr. Martinson concluded that appellant no longer residuals from the June 11, 2003 muscle strains. She came to her opinion after a thorough review of appellant's medical record, the statement of accepted facts and the findings on examination. In the absence of any contrary medical opinion that also appears rational and well founded, the Board finds that Dr. Martinson's opinion was sufficient to terminate appellant's compensation for the left shoulder and cervical muscle strain appellant sustained on June 11, 2003.

Dr. Rhoades, appellant's Board-certified physiatrist, directly disagreed with Dr. Martinson. He felt that appellant's neck and back pain were completely from her industrial injury. Dr. Rhoades based his opinion on the fact that she had persistent and significant pain in her neck, shoulder, back and legs only after the injury, never before the injury. He relied primarily on a temporal relationship in addressing causation. A temporal relationship is necessary but not sufficient to establish causal relationship. The mere fact that something can be observed after an injury is no proof that the injury caused it. Dr. Rhoades addressed symptoms relate to chronic back and hip disability which he attributed to the accepted injury. His report, addressing lumbar pain radiating into the left leg, her diffuse tenderness or total body pain or complaints of fatigue and weakness have not been previously related to her injury of June 11, 2003. The Office accepted only a left shoulder and cervical muscle strain in connection with the June 11, 2003 work injury. Its burden of proof to terminate compensation is limited to these specific conditions. The Office did not accept any low back or lower extremity condition and it carries no burden with respect to such.

Dr. Rhoades did not adequately explain how the accepted left shoulder and cervical muscle strains in 2003 persisted with continuing medical care. He primarily disagreed with Dr. Martinson's opinion that appellant's ongoing complaints of pain, fatigue and weakness were consequences of her metastatic ovarian carcinoma. The question, however, was whether appellant had residuals or disability from left shoulder and cervical strains she sustained in 2003. The Office did not terminate appellant's compensation because Dr. Rhoades failed to provide sound medical reasoning in support of continuing disability. But Dr. Rhoades opinion on the accepted conditions is of diminished probative value. When the Office issued its decision on April 14, 2008, the weight of the medical evidence supported the termination of compensation for the accepted left shoulder and cervical muscle strains. The Board will therefore affirm the Office's April 14, 2008 decision terminating benefits.

LEGAL PRECEDENT -- ISSUE 2

When the Office meets its burden of proof to justify terminating compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the accepted employment injury.⁶ Causal relationship is a medical issue⁷ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁸ must be one of reasonable medical certainty⁹ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹⁰

ANALYSIS -- ISSUE 2

The Office met its burden to terminate compensation for the left shoulder and cervical muscle strains. The burden of proof is on appellant to establish that she still has residuals of the accepted medical conditions or disability for work causally related to the June 11, 2003 injury.

Dr. Mahavni, the gynecologic oncologist, made clear that appellant had no evidence of residual disease with respect to her ovarian cancer, but that is not the relevant question on appeal. Dr. Rhoades and Dr. Mahavni may disagree with Dr. Martinson about whether appellant's ovarian cancer has anything to do with her current complaints; however, such disagreement is not germane to whether she has residuals of the June 11, 2003 injury. Dr. Mahavni did not address this issue.

Dr. Rhee, a Board-certified physiatrist, offered some support. He reported that causation for appellant's chronic whole back pain appeared consistent with the reported mechanism of injury, but he did not adequately explain how it was consistent. Dr. Rhee did not explain how the June 11, 2003 incident caused or contributed to a chronic medical condition persisting for years. Medical conclusions unsupported by rationale are of little probative value.¹¹ Moreover, Dr. Rhee did not provide a firm medical diagnosis. Pain, the Board notes, is a symptom, not a

⁶ *Wentworth M. Murray*, 7 ECAB 570 (1955); *Maurice E. King*, 6 ECAB 35 (1953) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity).

⁷ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁸ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁹ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹⁰ *See William E. Enright*, 31 ECAB 426, 430 (1980).

¹¹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

compensable medical diagnosis.¹² Dr. Rhee's opinion does not discharge appellant's burden of proof.

Dr. Remington, the Board-certified neurosurgeon, noted only that appellant did not have pain until her injury. He stated, "this may all be related." Such speculation carries little weight.¹³

Dr. Rhoades reported on September 10, 2008 that appellant had lumbar pain on the left and radiating to the left buttock. But he made no attempt to explain how this had anything to do with the June 11, 2003 injury to her left shoulder and cervical regions.

After the Office terminated her compensation, appellant failed to submit a well-reasoned medical opinion, based on a proper factual and medical background, to establish that she has a residual medical condition or disability causally related to the June 11, 2003 injury. Because the medical opinion evidence fails to establish the critical element of causal relationship, the Board finds that she has not met her burden of proof. The Board will affirm the Office's December 5, 2008 decision denying modification of the termination of her compensation.

CONCLUSION

The Board finds that the Office properly terminated compensation for appellant's June 11, 2003 left shoulder and cervical muscle strain. The Board also finds that she has not met her burden to establish that she continues to suffer a residual medical condition or disability causally related to the June 11, 2003 work incident.

¹² *Robert Broome*, 55 ECAB 339, 342 (2004).

¹³ *Philip J. Deroo*, 39 ECAB 1294 (1988) (although the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal); *Jennifer Beville*, 33 ECAB 1970 (1982) (statement of a Board-certified internist that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value).

ORDER

IT IS HEREBY ORDERED THAT the December 5 and April 14, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 6, 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