

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of STEPHANIE A. NORTON and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Wichita, Kans.

*Docket No. 96-683; Submitted on the Record;  
Issued March 3, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective March 6, 1994.

On April 12, 1991 appellant, then a 31-year-old manual clerk, developed pain in her right shoulder and neck after lifting a set of encyclopedias. The Office of Workers' Compensation Programs accepted her claim for cervical strain. On November 19, 1991 appellant was lifting a mail pouch when she felt a pull in her right shoulder. She indicated that by the next morning she had severe pain and stiffness in her right shoulder, shoulder blade and in her neck. The Office accepted appellant's condition for right shoulder strain. She received continuation of pay for November 20, 1991 and intermittently during the period January 1 through February 13, 1992. The Office began payment of temporary total disability compensation effective February 22, 1992 and authorized buy back of leave for the period February 15 through February 21, 1992. In a February 7, 1994 decision, the Office terminated appellant's compensation effective March 6, 1994 on the grounds that the evidence of record failed to establish that appellant had any residual orthopedic findings related to the November 19, 1991 employment injury. In a September 29, 1995 decision, an Office hearing representative affirmed the decision of the Office.

The Board finds that the Office met its burden of proof in terminating appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or 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.<sup>1</sup>

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<sup>1</sup> Jason C. Armstrong, 40 ECAB 907 (1989).

In a February 4, 1992 report, Dr. Ronald R. Reschly, a Board-certified orthopedic surgeon, indicated that he was unsure of the nature of appellant's condition. He stated that appellant could have a severe case of fibromyalgia but commented that there would more likely be a neck-related problem. Dr. Reschly suggested that appellant had a thoracic outlet syndrome. A magnetic resonance imaging scan showed reversal of the cervical curvature of the spine but was otherwise normal. An electromyogram and nerve conduction studies of the arms were normal. In a June 29, 1992 report, Dr. Reschly diagnosed fibromyalgia or fibromyositis, a former right shoulder strain and headaches. He noted that appellant had been evaluated for thoracic outlet syndrome but expressed doubt that appellant had that condition. Dr. Reschly commented that psychological factors were likely involved in appellant's condition.

The Office referred appellant to Dr. Joseph Gendel, a Board-certified orthopedic surgeon, for an examination. In an October 30, 1992 report, Dr. Gendel stated that x-rays of the cervical region of the spine were negative while x-rays of the thoracic region of the spine showed a mild scoliosis with convexity to the left and a deviation of the upper thoracic spine toward the right side along with the neck with the left shoulder girdle considerably higher than the right shoulder. He reported that x-rays also showed an old healed fracture of the distal portion of the right clavicle with considerable osteoporosis of the clavicle distal to the fracture. Dr. Gendel indicated that the shoulder joint showed no evidence of injury or disease. He diagnosed scoliosis of the spine, kyphosis of the spine centered at T10, abnormally elevated diaphragms, more on the right side, of undetermined cause, an old fracture of the clavicle, and a history of migraine headaches. Dr. Gendel stated that no disease of the neck or of the right arm was found. He indicated that although appellant had a great deal of complaint with the right shoulder and right arm, there was good muscle development of the arm which would indicate normal use of the arm. Dr. Gendel reported that reflexes were normal and minimal indication of decreased sensation involving the right arm which did not fit any nerve root distribution and was unrealistic. He indicated that the shoulder joint was normal by x-ray so there was no medical reason for the limited motion of the shoulder exhibited by appellant. Dr. Gendel commented that appellant's scoliosis was capable of causing discomfort at times when standing and working. He stated that scoliosis was developmental in origin which had no relation to the strains or sprains of working for the employing establishment. Dr. Gendel concluded that appellant had no residuals relating to her employment injuries. He stated that occasional upper back and neck discomfort was entirely related to preexisting scoliosis. Dr. Gendel indicated that appellant could return to work without restriction.

The Office referred appellant to Dr. Larry F. Glaser, a Board-certified orthopedic surgeon, together with the statement of accepted facts and the case record, to resolve the conflict in the medical evidence between Dr. Reschly and Dr. Gendel. In an August 31, 1993 report, Dr. Glaser stated that appellant had a normal range of motion of the neck but seemed hesitant at the extreme ranges of motion. He indicated that she complained of pain along the right interscapular border but he could not palpate any crepitus in this area. Dr. Glaser found no tenderness of the right shoulder at the acromioclavicular joint. He reported that appellant had a normal range of motion but complained of increasing shoulder pain in abduction and external rotation. Dr. Glaser stated that appellant complained of tenderness to palpation but it was not localized to any specific anatomic structures. He indicated that sensory examination over the median, ulnar and radial nerve distributions elicited various complaints, none of which were

specifically consistent nor confined to one anatomic dermatome. Dr. Glaser commented that standing scoliosis survey x-ray revealed no obvious scoliosis. X-rays of the shoulder revealed no bony abnormalities at the glenohumeral joint or acromioclavicular joint. Dr. Glaser noted a bony abnormality of the distal one-third of the clavicle that could be compatible with an old healed fracture or possibly with an abnormal reaction to attachment of the coracoclavicular ligament. He diagnosed chronic, subjective complaints of right shoulder pain of unknown etiology and the bony abnormality of the right clavicle. Dr. Glaser stated that the current objective evidence regarding a right shoulder strain did not substantiate any specific anatomic diagnosis that related to her chronic, subjective complaints. He concluded that appellant did not have any objective residual orthopedic findings related to her November 19, 1991 employment injury. Dr. Glaser stated that appellant could return to work without restrictions related to her chronic right shoulder complaints.

In situations when there exists opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>2</sup> Dr. Glaser's report is comprehensive and well rationalized. His conclusion that appellant had no specific anatomic diagnosis related to her subjective complaints is fully supported by his findings of no specific pattern in the palpation and sensory examination of appellant and no objective findings on x-rays that were related to the employment injury. His report, therefore, is entitled to special weight and, in the circumstances of this case, constitutes the weight of the medical evidence. Dr. Glaser's report provided the evidence necessary to meet the Office's burden of proof to terminate appellant's compensation.

The decision of the Office of Workers' Compensation Programs, dated September 29, 1995, is hereby affirmed.

Dated, Washington, D.C.  
March 3, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>2</sup> *James P. Roberts*, 31 ECAB 1010 (1980)