

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of RONALD M. KERR and DEPARTMENT OF VETERANS AFFAIRS,  
PUGET SOUND HEALTH CARE SYSTEM, Seattle, WA

*Docket No. 99-1334; Submitted on the Record;  
Issued December 28, 1999*

---

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits.

The Board has duly reviewed the case on appeal and finds that the Office met its burden to terminate appellant's compensation benefits.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.<sup>1</sup>

On July 10, 1997 the Office accepted that appellant, then a 45-year-old housekeeping aide, sustained employment-related right rotator cuff tendinitis. He was off work from December 17, 1996 to February 21, 1997 when he returned to a modified position and missed intermittent periods thereafter. By letter dated February 5, 1998, the Office referred appellant, along with a statement of accepted facts, a set of questions and the medical record, to Dr. Harry S. Reese, a Board-certified orthopedic surgeon, for a second-opinion evaluation. On June 9, 1998 the Office notified appellant that it proposed to terminate his compensation benefits and, by decision dated August 12, 1998 terminated his compensation.

The relevant medical evidence includes a January 16, 1998 report from appellant's treating Board-certified orthopedic surgeon, Dr. John F. Burns, who advised:

“When I examined [appellant] today, he had actually [a] fairly complete range of motion of both his shoulders and of his neck. He has normal strength of his

---

<sup>1</sup> See *Patricia A. Keller*, 45 ECAB 278 (1993).

rotator cuff and his deltoid. I really did not find too much, other than, of course, his subjective complaints of pain.”

“[Appellant] is apparently scheduled by the Department of Labor for an O[ffice] exam[ination] which I would encourage. I do not think massage therapy will have much in the way of any long-term improvement of these subjective complaints. I really do not have too much more to offer this gentleman in terms of treatment. I do not think he needs any further specific workup.”

In a January 26, 1998 report, appellant’s treating Board-certified internist, Dr. Bradley R. Harris, advised that appellant “is going to have some chronic problems associated with [his] shoulder girdle problem.”

Dr. Reese provided a second-opinion evaluation for the Office and, in a report dated March 5, 1998, diagnosed a history compatible with employment-related right shoulder rotator cuff tendinitis with no clinical evidence of residual symptoms on the day of examination. He also diagnosed preexisting myofascial cervicodorsal strain, perhaps aggravated by the employment injury, chronic cervicodorsal myofascial pain condition, antedating the employment injury and bilateral acromioclavicular joint degenerative joint disease, preexisting and not aggravated by or related to the employment injury. Dr. Reese advised that appellant had no objective evidence of residual employment injury, merely noting local tenderness in the upper trapezius region, more on the left than right with no involuntary twitch responses and no scapulothoracic crepitation or shoulder crepitation. He felt that appellant’s chronic neck and upper back myofascial discomfort was not consistently work related. Dr. Reese advised that appellant could return to his regular duties as a housekeeping aide for eight hours per day with no physical limitations.

In a March 27, 1998 report, Dr. Frederick A. Matsen, who is Board-certified in orthopedic surgery, noted the history of injury and advised that on examination, there was mild crepitus, right greater than left with no evidence of instability of his shoulder. He noted pain, predominantly at the base of the neck, on extension of his neck and on inclining his head to the right with no upper extremity neurological findings. Dr. Matsen opined, “He has sufficient discomfort that I believe it will be difficult for him to return to full duty.”

The Board finds that the Office met its burden of proof to terminate appellant’s compensation benefits. Dr. Burns, advised that, other than subjective complaints of pain, examination was normal. In a thorough second-opinion evaluation, Dr. Reese advised that appellant had no objective evidence of residual employment injury and could return to his regular duties as a housekeeping aide for eight hours per day with no physical limitations. While appellant submitted a report from Dr. Matsen, a Board-certified orthopedic surgeon, who noted findings on examination, he did not provide a diagnosis or indicate whether appellant’s condition was related to the employment injury. The Board has held that in assessing medical opinion evidence, the weight to be accorded such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician’s knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician’s

opinion are factors which enter into this evaluation.<sup>2</sup> The Office therefore properly determined that Dr. Reese's report, which was based upon a proper factual background and was well rationalized, constituted the weight of the medical evidence and met its burden of proof to terminate appellant's compensation benefits.

The decision of the Office of Workers' Compensation Programs dated August 12, 1998 is hereby affirmed.

Dated, Washington, D.C.  
December 28, 1999

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

---

<sup>2</sup> See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).