

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMIE R. HIBBS and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, Tex.

*Docket No. 97-1857; Submitted on the Record;
Issued June 2, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation for benefits for her accepted right shoulder strain and rotator cuff tear and for her accepted thoracic outlet syndrome.

On August 18, 1986 appellant, then a 30-year-old letter carrier, sustained an injury to her right arm and shoulder in the performance of duty when she picked up flats in the course of her federal employment. The Office accepted the claim for a right shoulder strain, a rotator cuff tear and a thoracic outlet syndrome. The Office later accepted the claim for a psychogenic pain disorder and appropriate compensation was awarded.

On November 29, 1994 Dr. G. Ken Hempel, appellant's treating physician and a Board-certified surgeon, released appellant to work one hour or less within limitations. He did not discuss the current status of appellant's employment-related conditions, the conditions causing appellant's disability, or any objective evidence.

Consequently, on October 26, 1995 the Office referred appellant to Dr. William E. Blair, Jr., a Board-certified orthopedic surgeon, for a second opinion examination. On November 9, 1995 he reviewed appellant's history and performed a physical examination. Dr. Blair noted that appellant demonstrated a negative Addison's test. He stated that there was no clinical basis to find that appellant had thoracic outlet syndrome causally related to her federal employment. Dr. Blair further stated that there was no clear evidence of shoulder strain or a rotator cuff tear. He found that appellant demonstrated chronic pain behavior. In an updated report provided on January 4, 1996, Dr. Blair indicated that there was no objective evidence of thoracic outlet syndrome and no evidence that appellant sustained a disabling strain or tear of the rotator cuff. He stated that there was not a clinical basis for appellant's subjective complaints.

On February 26, 1996 the Office issued a "Notice of Proposed Termination of Compensation and Medical Benefits." The Office indicated that appellant's injury-related condition had ceased and allowed appellant 30 days to submit additional evidence or argument. In an accompanying memorandum, the Office noted that Dr. Blair's opinion constituted the weight of the medical evidence on the issue of continuing orthopedic disability.

On March 5, 1996 Dr. Hempel noted a positive costoclavicular and hyperabduction test on the right side with total obliteration of the radial pulse. On this basis, he diagnosed thoracic outlet syndrome. Dr. Hempel stated that appellant continued to exhibit symptoms of this condition.

By decision dated March 12, 1996, the Office terminated appellant's benefits effective March 12, 1996 because the weight of the medical evidence established that the accepted conditions had resolved. In an accompanying memorandum, the Office noted that Dr. Blair's opinion constituted the weight of the medical evidence on the issue of continuing injury-related orthopedic disability.

On May 7, 1996 appellant requested reconsideration. In support, appellant resubmitted the evidence which initially established her entitlement to benefits. This evidence included the October 7, 1987 report of Dr. George A. Wharton, a Board-certified orthopedic surgeon, who diagnosed right rotator cuff syndrome with a probable tear and thoracic outlet syndrome. Appellant also submitted Dr. Burkhead's curriculum vitae and his March 5, 1996 report noting that appellant held her right shoulder in a lower, somewhat ptotic fashion. He also indicated that there was a positive Wright's maneuver with diminishing right radial pulse and reproduction of her symptoms with hyperabduction and extension at the right shoulder. Dr. Burkhead diagnosed thoracic outlet syndrome. Appellant also submitted Dr. Hempel's curriculum vitae.

On August 22, 1996 Dr. B. Ward Lane, a Board-certified general and vascular surgeon, stated that there was no clinical evidence of thoracic outlet syndrome. He based his conclusion on his examination. Dr. Lane stated that the right radial pulse did not decrease on hyperabduction and external rotation. He stated that normal pulses were present in both radial areas with adson maneuver. Dr. Lane also indicated that auscultation of the right subclavian artery during these maneuvers demonstrated no bruit. He noted no significant tenderness present over the supraclavicular area. Dr. Lane stated that he also based his opinion on a previous normal electromyography and the history of the injury provided. He attributed the onset of pain to a likely tear of the rotator cuff.

On August 26, 1996 Dr. Hempel stated that there was evidence on physical examination of thoracic outlet syndrome. He noted a positive hyperabduction, costoclavicular, and Adson's test with total obliteration of the right radial pulse by physical examination and by Doppler examination when she assumes a hyperabductive position, the military brace position, or takes a breath holds it and turns her head to the opposite side. Dr. Hempel also noted some numbness along the ulnar distribution of the right hand and some loss of strength, particularly with repetitive motion.

On August 26, 1996 the Office found that there was a conflict of medical opinion and referred the case, along with a statement of accepted facts to Dr. Frank Wood, a Board-certified

orthopedic surgeon, to determine if appellant continued to have residuals from her accepted employment-related thoracic outlet syndrome and her right rotator cuff/shoulder strain.

On September 3, 1996 Dr. Lane treated appellant for pain in the right shoulder, right axilla aggravated by movement. He reviewed the history of appellant's injury and the treatment she received. Dr. Lane again indicated that there was no evidence of thoracic outlet syndrome based on his physical examination.

On September 6, 1996 Dr. Wood provided his examination. He recorded the history of appellant's injury on August 18, 1986 and noted that appellant was diagnosed with thoracic outlet syndrome and a possible rotator cuff tear. Dr. Wood noted symptoms of pain in appellant's right shoulder. He stated that the record was devoid of evidence of a past or present rotator cuff tear. Dr. Wood, however, stated that it was very likely appellant had thoracic outlet syndrome, but that this diagnosis was not supported by any objective evidence.

On October 4, 1996 Dr. Wood indicated that appellant did not have an ongoing shoulder strain as any such condition occurring in 1986 would have since resolved. He also stated that there was no evidence of a rotator cuff tear because appellant could initiate and sustain abduction against resistance in the right shoulder and because she had good strength against resisted internal and external rotation in abduction.

On December 5, 1996 the Office found that a conflict in the medical opinion evidence existed and referred appellant to Dr. Maruf Razzuk, a Board-certified thoracic surgeon, to determine whether appellant continued to suffer residuals from her employment-related thoracic outlet syndrome.

On January 13, 1997 Dr. Razzuk provided his opinion. He noted appellant's history of injury and the treatment received. Following a complete physical examination, Dr. Razzuk found no evidence of thoracic outlet syndrome. He stated that the complaints of pain in the shoulder and hand were vague and that there were no physical findings to support abnormality. Dr. Razzuk stated that the finding of tenderness in the shoulder was subjective and that the minimal difference in circumference of appellant's arms was not clinically significant.

By decision dated January 27, 1997, the Office reviewed the merits of the case and found that the evidence submitted in support of the application for benefits was not sufficient to warrant modification of its prior decision. In an accompanying memorandum, the Office indicated that it relied on the opinion of Dr. Wood to resolve the conflict of medical opinion concerning whether appellant continued to have an employment-related shoulder strain and rotator cuff strain and that it relied on the opinion of Dr. Razzuk to resolve the conflict of medical opinion concerning whether appellant continued to have an employment-related thoracic outlet syndrome.

The Board finds that the Office met its burden in terminating appellant's compensation for benefits for her accepted right shoulder strain and rotator cuff tear and for her accepted thoracic outlet syndrome.

Once the Office accepts a claim, it has the burden of proving that the disability ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.² Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.³ To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires medical treatment.⁴

In the present case, the Office accepted appellant's claim for both a right shoulder strain and rotator cuff tear and a thoracic outlet syndrome. The diagnosis of a shoulder strain and a rotator cuff tear was provided by Dr. Wharton and appellant's attending physicians, Drs. Burkhead and Hempel, continued to treat appellant for these conditions. Nevertheless, Dr. Blair, a Board-certified orthopedic surgeon, provided an opinion at the request of the Office indicating that there was no evidence supporting the existence of a shoulder strain or a rotator cuff tear. Because of this conflict of the medical evidence, the Office referred appellant to Dr. Wood for an impartial medical examination pursuant to section 8123 of the Federal Employees' Compensation Act.⁵

In situations where there are opposing medical reports of virtually equal weight and the case is referred to an impartial medical specialist, the opinion of such a specialist will be given special weight if it is based on a proper factual background and well rationalized.⁶ In this case, Dr. Wood thoroughly reviewed appellant's medical history and performed a complete physical examination. He explained that because there was no objective evidence of these conditions and they usually resolved over this period of time that appellant did not have a shoulder strain or a rotator cuff strain. Because Dr. Wood's opinion was based on a proper factual background and supported by medical rationale his opinion, as that of the impartial medical specialist, constitutes the weight of the evidence. The Office, therefore, properly terminated appellant's benefits for her shoulder strain and rotator cuff tear.

There remained, however, a conflict of the medical opinion evidence concerning whether appellant continued to suffer residuals from her thoracic outlet syndrome.⁷ On August 22, 1996

¹ *Frederick Justiniano*, 45 ECAB 491 (1994).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

⁵ 5 U.S.C. § 8128 *et seq.*

⁶ *Jack R. Smith*, 41 ECAB 691 (1990).

⁷ Dr. Wood's opinion on this issue was equivocal. He stated that appellant likely had thoracic outlet syndrome, but that his diagnosis was not supported by objective evidence. His opinion regarding whether appellant continues to suffer from employment-related thoracic outlet syndrome therefore is entitled to little weight. *Roger Dingess*, 47 ECAB 123 (1995).

Dr. Lane performed a comprehensive examination for the Office and found no evidence of thoracic outlet syndrome. In contrast, appellant's treating physician, Dr. Hempel performed a similar examination and found that appellant had thoracic outlet syndrome. The Office, therefore, referred appellant to Dr. Razzuk to resolve the conflict in this evidence. He reviewed appellant's entire history and performed a complete examination. He concluded that because appellant failed to demonstrate any objective evidence of the condition, appellant did not have thoracic outlet syndrome. Because Dr. Razzuk's opinion was based on a proper factual background and supported by medical rationale his opinion, as that of the impartial medical specialist, constitutes the weight of the evidence on this issue. The Office, therefore, properly found that appellant no longer suffered from thoracic outlet syndrome.

The decision of the Office of Workers' Compensation Programs dated January 27, 1997 is affirmed.

Dated, Washington, D.C.
June 2, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member