

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND GOMEZ and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Brooklyn, NY

*Docket No. 99-1619; Submitted on the Record;
Issued April 4, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's medical benefits effective May 7, 1996 on the grounds that his work-related disability had ceased on or before that date; and (2) whether appellant has met his burden of proof to establish that he is entitled to continuing medical benefits on or after May 7, 1996.

On March 4, 1993 appellant, then a 44-year-old mail processor, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on March 1, 1993 he sustained tendinitis of the left elbow while lifting trays of mail. The Office accepted the claim for right tennis elbow. Appellant returned to limited duty eight hours per day.

On June 21, 1993 appellant filed a claim for a recurrence of disability commencing June 17, 1993 causally related to his accepted March 1, 1993 employment injury. The Office accepted his claim for left elbow tendinitis and left rotary cuff muscle strain on March 26, 1994. Appellant was totally disabled from June 17, 1993 until he returned to limited duty working eight hours per day on July 26, 1993 with no loss of wage-earning capacity.

On August 30, 1995 the Office referred appellant to Dr. Edward Toriello¹ for a second opinion on whether appellant continued to have any disability causally related to his accepted employment injury.

In a report dated September 11, 1994, Dr. Toriello opined, based upon appellant's employment injury and medical history, a review of the medical records, statement of accepted facts and physical examination, that the objective evidence indicated that appellant did not have any continuing disability from his accepted employment injury. Furthermore, he opined that appellant would be able to perform his usual federal employment and that no further medical

¹ A Board-certified orthopedic surgeon.

treatment was necessary. A physical examination revealed full range of motion of the shoulder and no evidence of instability or muscle atrophy in the shoulder and that the impingement sign was negative. Regarding appellant's left elbow, Dr. Toriello noted that there was no neurovascular deficit and grip strength was within normal limits.

In a duty status report (Form CA-17) dated December 14, 1995, Dr. Russell Silver,² an attending physician Board-certified in physical medicine and rehabilitation, indicated that appellant could work eight hours per day with restrictions on sitting and lifting.

In a work restriction form (OWCP-5) received by the Office on February 5, 1996, Dr. Silver stated that appellant's condition was unchanged and that he was unable to determine when he could return to unrestricted work.

The Office received a Form OWCP-5 on March 11, 1996 from Dr. Silver stating that appellant still had restrictions on lifting and that appellant had reached maximum medical improvement.

In an undated attending physician's report (Form CA-20) received on March 11, 1996, Dr. Silver indicated that appellant was partially disabled from July 18, 1993 to an undeterminable date. He also requested physical therapy for appellant's muscle spasm and neck pain.

On May 7, 1996 the Office issued a decision terminating appellant's medical benefits based upon Dr. Toriello's opinion that appellant no longer suffered from residuals of his accepted employment injury and could return to his usual employment.

In a letter dated June 26, 1996, appellant requested reconsideration of the termination of his benefits and submitted an undated report from Dr. Silver who noted that he had examined appellant on November 9, 1995 and that appellant had limited range of motion in his cervical spine while appellant had full range of motion in his upper extremities. He then opined that appellant was "limited in all daily activities, transfers and ambulations, due to physical findings mentioned above." Lastly, Dr. Silver noted that "[i]f the history of the occurrence is correct as described above, then the accident of March 6, 1993 is the competent product cause of his existing pathology."

By merit decision dated July 12, 1996, the Office denied appellant's request for reconsideration on the basis that the evidence submitted was insufficient to warrant modification of the prior decision.

By letter dated August 7, 1996, appellant requested reconsideration and argued that the termination was based on incomplete medical documentation as Dr. Toriello failed to take any

² The Office had sent a copy of Dr. Toriello's report to Dr. Dunkleman, appellant's treating physician at Healthchecks, for his opinion and to request an OWCP-5 be completed. The Office received the CA-17 from Dr. Silver of Healthchecks who now appears to be appellant's treating physician. The Board notes that the record also contains a letter from Dr. J. Fricano, a chiropractor, who indicated that appellant sustained injuries on November 10, 1995 due to an automobile accident.

x-ray readings or magnetic resonance imaging (MRI) tests. Appellant also submitted medical evidence in support of his request. The medical evidence submitted included an August 4, 1995 and April 19, 1996 work restriction forms completed by Dr. Silver indicating that appellant was able to return to work with restrictions; two reports, one dated August 1, 1996; and two copies an undated report, by Dr. Silver noting that appellant continued to have residuals from his employment injury.

The Office denied appellant's request for reconsideration in a merit decision dated August 30, 1996.

In a letter dated May 5, 1997, appellant requested reconsideration which was denied by the Office on October 3, 1997.

By letter dated August 27, 1998, appellant's counsel requested reconsideration and submitted medical reports dated May 18 and July 3, 1997 and April 14, 1998 from Dr. Daniel W. Wilen³ in support of his reconsideration request. Dr. Wilen, in his May 18, 1997 report, recommended arthroscopic surgery and opined that appellant's "injuries to the left shoulder and left elbow, and the acquired neck pains are causally related" to the March 1, 1993 employment injury. In the July 3, 1997 report, Dr. Wilen noted that appellant had the arthroscopic surgery and continued to have left shoulder pain as well as loss of motion and muscle strength. Dr. Wilen, in an April 14, 1998 report, indicated that appellant continued to have radicular symptoms in both his arms as well as limited strength in the left shoulder which he opined was "due to his overuse activity and repetitive lifting of the mail at work" as well as the March 1, 1993 employment injury.

By letter dated December 23, 1998, the Office referred appellant to Dr. Nate Bondi⁴ for an impartial medical examination to resolve the conflict in the medical opinion evidence between the opinions of Drs. Wilen and Toriello.

In a report dated January 9, 1999, Dr. Bondi, based upon a review of the records, statement of accepted facts and physical examination, concluded that appellant had no residual disability from his employment injury and was capable of performing his usual job. Dr. Bondi noted that an MRI test of the cervical spine showed no cervical disc herniation and that a May 25, 1997 MRI scan of the left shoulder showed no evidence of a rotator cuff tear although it did reveal a mild degree of joint fluid. Physical examination revealed full range of motion in the cervical spine, an unremarkable spurling test, full range of motion in the left shoulder, a negative sulcus test, a negative abduction test, an unremarkable axial compression test, the acromioclavicular joint and biceps tendon were nontender to palpation, and the impingement sign was negative. Dr. Bondi further noted that there was no atrophy evident in the left shoulder when compared to the right and that there was full range of motion in the left shoulder as to extension, flexion, supination and pronation. Appellant's Phalen's test and Tinel's sign were unremarkable. Regarding the right elbow, Dr. Bondi noted that appellant had full range of

³ An attending Board-certified orthopedic surgeon.

⁴ A Board-certified orthopedic surgeon.

motion, the extensor and flexion tests were nontender in the lateral epicondyle. Based upon a normal physical examination and review of the medical evidence, Dr. Bondi concluded that there was no objective evidence to support any continuing disability. Furthermore, he indicated that further orthopedic treatment was thus unwarranted.

On January 22, 1999 the Office denied appellant's request for modification and found that the opinion of Dr. Bondi, the impartial medical examiner, represented the weight of the evidence that appellant no longer suffered from residuals of his injury.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective May 7, 1996 on the grounds that his work-related disability had ceased on or before that date.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.⁵ 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.⁶ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁸

In assessing medical evidence, the weight of 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 the analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given to each individual report.⁹

In this case, the Office accepted that appellant sustained right tennis elbow, left elbow tendinitis and left rotary cuff muscle strain. The Office paid appropriate medical benefits and subsequently referred appellant to Dr. Toriello for a second opinion evaluation. The Board finds that at the time it terminated medical benefits the weight of the medical evidence rested with Dr. Toriello who submitted a thorough medical opinion based upon a complete and accurate factual and medical history. He performed a complete examination, reviewed the record and advised that appellant had not continued disability from his accepted employment injury, was capable of performing his usual employment and that further medical treatment was unnecessary. Dr. Silver's December 14, 1995 duty status report, work restriction forms dated February 5 and

⁵ *Lawrence D. Price*, 47 ECAB 120 (1995).

⁶ *Id.*; see *Patricia A. Keller*, 45 ECAB 278 (1993).

⁷ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁸ *Id.*

⁹ See *Connie Johns*, 44 ECAB 560 (1993).

March 11, 1996 and an undated attending physician's report received by the Office on March 11, 1996 are of diminished probative value as the physician did not explain why appellant was unable to return to unrestricted work or why he continued to be disabled due to his accepted employment injury. Furthermore, Dr. Silver did not specifically indicate whether any continuing condition was employment related.

The Board therefore finds that Dr. Toriello's report established, at that time, that appellant ceased to have any disability or condition causally related to his employment injuries, thereby justifying the Office's May 7, 1996 termination of medical benefits.¹⁰ Thus, the burden of proof shifted to appellant to establish that his disability subsequent to May 7, 1996 continued to be causally related to his employment injury.¹¹

Subsequent to the termination of medical benefits, the Office, acting in response to appellant's request for reconsideration, found that there was a conflict in the medical evidence between Dr. Toriello's opinion and that of Dr. Wilen, and it therefore referred appellant, a statement of accepted facts and his medical records to Dr. Bondi, an impartial medical examiner. In his January 9, 1999 medical report, Dr. Bondi concluded that appellant had no residual disability due to his employment injury and was capable of performing his usual employment. He also opined that any further orthopedic treatment was unwarranted. Based on Dr. Bondi's report, the Office denied modification of its previous decision terminating compensation.

The Board finds that Dr. Bondi's opinion negating any disability due to his March 4, 1993 employment injury and that appellant no longer had any residuals from the employment injury is sufficiently probative, rationalized, and based upon a proper factual background and that therefore, Dr. Bondi's January 9, 1998 report is accorded the special weight of an impartial medical examiner.¹² The Board notes that Dr. Bondi reviewed appellant's employment injury history and medical evidence, reported extensive findings on examination and opined that he found no basis on which to attribute any condition to appellant's right tennis elbow, left elbow tendinitis and left rotary cuff muscle strain. The doctor explained his conclusion by noting that there was no objective evidence in either elbow or the left shoulder to substantiate appellant's complaints. Dr. Bondi further stated as appellant's orthopedic examination was normal, appellant had no limitations as to his full employment duties.

¹⁰ See *Joe Bowers*, 44 ECAB 423 (1993)

¹¹ See *Talmdage Miller*, 47 ECAB 673 (1996).

¹² *Gary R. Seiber*, 46 ECAB 215 (1994).

The decision of the Office of Workers' Compensation Programs dated January 22, 1999 is affirmed.

Dated, Washington, D.C.
April 4, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member