

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL R. NIXON and U.S. POSTAL SERVICE,  
POST OFFICE, Inglewood, CA

*Docket No. 98-1680; Submitted on the Record;  
Issued July 25, 2000*

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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 for the employment injury he sustained on November 18, 1992.

In a decision dated January 30, 1998, the Office indicated that appellant sustained a right shoulder strain while in the performance of his duties on November 18, 1992. The Office found, however, that the weight of the medical opinion evidence established that appellant no longer had residuals of this injury. The Office therefore terminated his entitlement to compensation benefits.

The Board finds that the Office properly terminated appellant's compensation benefits.

It is well established that, once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>1</sup> 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>2</sup>

In a report dated June 13, 1995, Dr. Ronald D. Levin, an orthopedist and Office referral physician, stated that he had examined appellant that day. He reviewed the medical records forwarded by the Office, the statement of accepted facts and appellant's job description. Dr. Levin related appellant's history of injury and present complaints. On physical examination of the neck and upper extremities, he reported normal findings: negative Spurling's sign, no

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<sup>1</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>2</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

motor or sensory loss in either upper extremity, bilaterally symmetrical deep tendon reflexes, normal cervical lordotic curve, no wasting of the shoulder musculature or winging of the scapula, free neck motion, no tenderness along the cervical spine or trapezius muscles, no swelling or asymmetry of the neck region, no tenderness whatsoever along the bicipital tendon or subdeltoid bursa and no swelling or discoloration on the other side of the shoulder. Dr. Levin reported that the remainder of the examination was unremarkable. In addition he noted that all radiological studies were reported to have been within normal limits. Dr. Levin diagnosed “right shoulder strain, doubt rotator cuff tear or impingement syndrome.” Responding to questions posed by the Office, he noted that subjectively appellant complained of constant but minimal pain in the right shoulder; however, there were no objective findings. Dr. Levin explained that there was no evidence of rotator cuff tear or impingement syndrome and no current evidence of a cervical strain. It was difficult to understand, he reported, why appellant’s symptoms had persisted. Appellant had not worked since November 18, 1992 and therefore had adequate time to recover from any effects of his right shoulder strain. Dr. Levin saw no indication for further medical treatment: “I certainly do not feel that [appellant] requires surgery, in spite of the other physicians’ reports. He has no objective physical findings whatsoever.” Dr. Levin concluded that appellant should be able to perform all the duties of his position without restriction.

The Board finds that Dr. Levin’s opinion is based on a complete and accurate factual and medical background, is well reasoned and is sufficient to justify the Office’s termination of compensation benefits. Appellant has submitted no subsequent medical opinion to the contrary. On September 21, 1994 approximately nine months prior to Dr. Levin’s examination, appellant’s attending orthopedic surgeon, Dr. Joseph M. Page, reported that appellant’s right shoulder clicked with flexion, abduction and external rotation. There was a grinding of the rotator cuff anteriorly over the acromion, he noted and a subluxation of the acromioclavicular joint with flexion, abduction and external rotation. Dr. Levin reported, however, that a magnetic resonance imaging scan performed one week earlier failed to confirm any abnormality. Dr. Page diagnosed chronic impingement syndrome of the right shoulder and subluxation of the right acromioclavicular joint and he recommended surgery.

Dr. Page’s September 21, 1994 report is not as thorough as Dr. Levin’s and is lacking in rationale. In reporting his diagnosis, Dr. Page failed to reconcile the lack of confirmation by diagnostic testing. He also failed to explain the reason he recommended surgery in the absence of a positive diagnostic test. Without medical reasoning that would make his diagnosis and recommendation for surgery appear sound, rational and logical, Dr. Page’s opinion is of diminished probative value.<sup>3</sup>

As Dr. Levin’s opinion represents the weight of the medical opinion evidence and establishes that appellant no longer suffers residuals of his November 18, 1992 employment injury, the Office has met its burden of proof to justify the termination of appellant’s compensation benefits.

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<sup>3</sup> See *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954) (medical conclusions unsupported by rationale are of little probative value).

The January 30, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
July 25, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member