

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LENA D. KING and U.S. POSTAL SERVICE,
KILMER GENERAL MAIL FACILITY, Edison, NJ

*Docket No. 01-951; Submitted on the Record;
Issued December 28, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective September 11, 1999; and (2) whether appellant had any disability after September 11, 1999 causally related to her employment injury.

On February 19, 1996 the Office accepted that appellant, then a 54-year-old distribution clerk, sustained an employment-related right rotator cuff tear.¹ Appellant was initially treated by Dr. David Kirschenbaum and, following her request, came under the care of Dr. Michael L. Silverstein.²

By letter dated July 20, 1999, the Office informed appellant that it proposed to terminate her compensation, based on the opinion of Dr. Silverstein who advised that she had no further residuals. By decision dated September 7, 1999, the Office terminated appellant's benefits, effective September 11, 1999, on the grounds that her work-related disability had ceased.

On September 9, 1999 appellant, through counsel, requested a hearing and submitted additional evidence. In an April 24, 2000 decision, an Office hearing representative affirmed the September 7, 1999 decision. On September 14, 2000 appellant, through counsel, requested reconsideration and submitted additional medical evidence. By decision dated November 30, 2000, the Office denied modification of the prior decisions. The instant appeal follows.

¹ The record indicates that appellant filed an occupational disease claim on September 20, 1993. By decision dated January 6, 1994, the Office denied the claim. Following appellant's request, a hearing was held on March 21, 1995. In an October 6, 1995 decision, an Office hearing representative remanded the case for further development. Appellant was then referred for a second-opinion evaluation, and on February 15, 1996, the claim was accepted for right rotator cuff tear. She underwent surgery on May 7, 1996 and returned to limited duty on September 16, 1996. In a decision dated June 25, 1998, the Office determined that appellant's actual earnings represented her wage-earning capacity.

² Both physicians are Board-certified orthopedic surgeons.

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

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.³ Furthermore, in situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁴

The medical evidence relevant to the termination of appellant's compensation includes an attending physician's report dated June 16, 1999 in which, Dr. Silverstein advised that appellant had reached maximum medical improvement, had no limitations and could return to regular duty on February 12, 1999. In a report dated June 25, 1999, Dr. Silverstein advised that appellant was not disabled and discharged her from his care. He stated that appellant was complaining of pain and weakness about her right shoulder and that he would reevaluate her after a magnetic resonance imaging (MRI) scan. In a work capacity evaluation dated July 2, 1999, Dr. Silverstein reiterated that appellant had no limitations and could return to work for eight hours a day.⁵

In an August 16, 1999 report, Dr. Patrick Gainey, a Board-certified neurologist, noted that appellant had complaints of chronic pain over the right shoulder and paracervical area and over the trapezius muscle, stating, "I suspect that her pain is predominately musculoskeletal in etiology although she does have a prior history of rotator cuff injury and she is scheduled to undergo reevaluation with an MRI."

An MRI arthrogram of the right shoulder on August 31, 1999 demonstrated findings consistent with a prior rotator cuff repair. The report stated that for the most part, the supraspinatus tendon repair appeared to be intact although there was concern of a focal full-thickness tear at the posterior aspect of the repair site.

Dr. Silverstein stated in June 1999 that he would reevaluate appellant after an MRI. In a report dated July 2, 1999, he advised that appellant had no limitations. In his report dated August 16, 1999, Dr. Gainey merely noted appellant's complaints and suspected that her pain was predominately musculoskeletal in etiology. The MRI scan demonstrated findings consistent with a prior rotator cuff repair and the possibility of a new tear in the posterior aspect of the repair site.⁶ The medical evidence therefore establishes that appellant's disability causally

³ See *Patricia A. Keller*, 45 ECAB 278 (1993).

⁴ See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

⁵ This report was in response to a July 1, 1999 letter in which the Office provided Dr. Silverstein with a copy of appellant's date-of-injury job description and asked if she could return to work without restrictions.

⁶ If appellant were to have a new rotator cuff tear, this would constitute a new injury. Thus, the burden would be on appellant to establish that this condition was employment related, whether an aggravation of the original injury or a new and distinct injury.

related to her accepted right rotator cuff tear had ceased and the Office properly terminated her compensation effective September 11, 1999.

The Board further finds that appellant failed to establish that she had employment-related disability after September 11, 1999 causally related to the accepted right rotator cuff tear.

As the Office met its burden of proof to terminate appellant's compensation, the burden shifted to her to establish that she had disability causally related to his accepted injury.⁷ To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁸ Causal relationship is a medical issue,⁹ and the medical evidence required to establish a causal relationship is rationalized medical evidence.

Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

The medical evidence submitted subsequent to the September 7, 1999 decision terminating appellant's compensation includes a July 24, 2000 report in which Dr. David Weiss, an osteopathic physician, diagnosed chronic post-traumatic right shoulder girdle strain and sprain, status post rotator cuff tear with impingement, status post rotator cuff repair on May 7, 1996, full thickness rotator cuff tear by MRI arthrogram. On examination he noted findings of restrictions in range of motion, a positive Hawkins sign and isometric weakness. In conclusion he opined that appellant continued to suffer residuals of the August 1993 employment injury. In a report dated September 11, 2000, Dr. Weiss reiterated his opinion that appellant had permanent restrictions from her work-related injury.

The Board finds that Dr. Weiss did not provide a rationalized opinion explaining how the accepted rotator cuff tear, especially in light of the possible new tear found on MRI, contributed to appellant's continuing complaints. The record therefore contains no evidence that appellant continued to be disabled after September 11, 1999 due to the employment injury.

⁷ See *George Servetas*, 43 ECAB 424 (1992).

⁸ See 20 C.F.R. § 10.110(a); *Kathryn Haggerty*, *supra* note 4.

⁹ *Mary J. Briggs*, 37 ECAB 578 (1986).

¹⁰ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The decisions of the Office of Workers' Compensation Programs dated November 30 and April 24, 2000 are hereby affirmed.

Dated, Washington, DC
December 28, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member