

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS L. MOORE and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Los Angeles, CA

*Docket No. 00-2095; Submitted on the Record;
Issued July 16, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

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

On December 12, 1989 appellant, then a 56-year-old revenue officer, filed a claim for a November 20, 1989 employment injury. He stated that he had bent down to replace paper in the copy machine and felt a sharp twinge in his left shoulder when he turned after someone called to him. Appellant received continuation of pay intermittently from November 30, 1989 through January 24, 1990. The Office accepted his claim for left shoulder sprain and capsulitis and began payment of temporary total disability compensation effective February 11, 1990.

In a March 31, 1999 decision, the Office terminated appellant's compensation effective April 24, 1999 on the grounds that the weight of the medical evidence showed that appellant's current condition was not related to his employment. Appellant requested a hearing which was conducted on September 1, 1999. In an October 13, 1999 decision, the Office hearing representative affirmed the Office's March 31, 1999 decision. In an April 17, 2000 letter, appellant's attorney submitted additional medical evidence and requested reconsideration. In an April 27, 2000 merit decision, the Office denied the request for modification.

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

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.¹

¹ Jason C. Armstrong, 40 ECAB 907 (1989).

In an April 16, 1990 report, Dr. Edward Starr, a Board-certified orthopedic surgeon, diagnosed bursitis and capsulitis of the left shoulder. In a September 28, 1990 report, Dr. Starr indicated that a magnetic resonance imaging (MRI) scan showed a possible tear and impingement of the rotator cuff.

The Office referred appellant, a statement of accepted facts and the case record to Dr. Christopher Jordan, a Board-certified orthopedic surgeon, for an examination and second opinion. In an April 9, 1991 report, he stated that the MRI scan showed an apparent partial thickness tear of the supraspinatus tendon. Dr. Jordan diagnosed rotator cuff tendinitis and capsulitis of the left shoulder. He recommended surgery.

The Office referred appellant, a statement of accepted facts and the case record to Dr. Joseph E. Jensen, a Board-certified orthopedic surgeon, to resolve a conflict in opinion between Drs. Starr and Jordan on whether appellant was able to work. In a September 18, 1991 report, Dr. Jensen diagnosed rotator cuff tendinitis with a partial or complete rupture of the supraspinatus tendon, which he considered to be a preexisting impingement syndrome. Dr. Jensen commented that appellant had preexisting pathology, and the employment injury precipitated a tearing of the rotator cuff tendon, causing painful tendinitis, limited motion and eventual frozen shoulder. He stated that appellant continued to suffer from a moderately severe degree of capsulitis and frozen shoulder, which was from the rotator cuff tear. Dr. Jensen concluded that appellant was not totally disabled and was employable in work that did not require use of his left arm for manual activities.

In a July 24, 1995 letter, the Office referred appellant to Dr. Daniel J. Boyce, a Board-certified orthopedic surgeon, for an examination and second opinion. In a September 5, 1995 report, he stated that appellant did not appear to have any distinct atrophy around either shoulder. Dr. Boyce noted limitation in motion in the left shoulder but no distress or pain. X-rays showed slight sclerosis of the greater tuberosity and acromion and small early spur formation in the left shoulder. He diagnosed chronic impingement syndrome of the left shoulder.

Dr. Boyce concurred with Dr. Jensen's conclusion that there was a preexisting left shoulder condition and stated that appellant's shoulder problem was precipitated by a very trivial maneuver, placing paper in a copying machine. He commented that such a maneuver would not have caused much difficulty unless appellant had a preexisting pathology. Placing the paper in the copying machine precipitated appellant's symptoms.

Dr. Boyce indicated that the precipitant injury was very minor and only partially responsible for appellant's condition and his absenteeism from work. He stated that the vast majority of appellant's disability in his left shoulder related to a preexisting and underlying shoulder impingement. Dr. Boyce estimated that 90 percent of appellant's disability in the left shoulder was due to the common condition of chronic impingement and 10 percent arose out of his work. He added that appellant was not totally disabled.

In a June 15, 1998 letter, the Office referred appellant to Dr. Thomas R. Dorsey, a Board-certified orthopedic surgeon, for an updated examination and second opinion. In a July 6, 1998 report, he stated that appellant had a left shoulder impingement syndrome with a suspected rotator cuff tear that was not medically connected to appellant's November 23, 1989 work

incident. Dr. Dorsey indicated that appellant's reported employment injury would not have resulted in any traumatic injury to the left shoulder. He commented that there would have been no material aggravation of appellant's left shoulder, either temporarily or permanently, as a result of bending over to put paper in a copy machine. Dr. Dorsey stated that such an activity was not above and beyond routine activities of daily living.

Dr. Dorsey concluded that appellant had no legitimate injury-related factors of disability and no objective findings or objective complaints that would be legitimately work related. He stated that impingement syndrome was a condition in which the structures beneath the rotator cuff are under a chronic degree of increased pressure and abnormal friction, resulting in tendinitis which could lead ultimately to a rotator cuff tear. Dr. Dorsey commented that such a condition could not come from a single trauma of any magnitude.

The reports of Drs. Jensen and Boyce, given eight and four years, respectively, prior to the termination of compensation, are not sufficiently recent to contradict Dr. Dorsey's conclusion that appellant's disability was no longer causally related to his employment injury nine years previously. The Board finds that Dr. Dorsey's report constitutes the weight of the medical evidence and formed a sufficient basis for the Office's decision to terminate appellant's compensation.

In an April 17, 2000 report, Dr. Richard Pitts, an osteopath, stated that appellant had significant left shoulder impingement. He stated that, while appellant may have had some underlying impingement, his experience and the medical literature indicated that it clearly took an inciting incident to make an impingement symptomatic. Dr. Pitts indicated that appellant had such an event in reaching for a stuck piece of paper in the copy machine.

Appellant has presented two versions of how the employment injury occurred. On the initial claim form, he stated that he felt a twinge in his shoulder while he was loading the copy machine and turned when someone called him. At the hearing 10 years later appellant stated that he was reaching for a piece of paper that was stuck in the copy machine when he felt a pop in his shoulder. While it might be possible to reconcile the different versions of how the injury occurred, appellant has not done so. Dr. Pitts' report, however, is based on the history given by appellant at the hearing, that he was reaching into the copy machine to get a piece of paper stuck there. As appellant has not informed the Office which account of his employment injury is accurate, Dr. Pitts' report must be considered to be based on an inaccurate history. It, therefore, is of diminished probative value and is insufficient to create a conflict in the medical evidence with Dr. Dorsey's report.

The decisions of the Office of Workers' Compensation Programs, dated April 27, 2000 and October 13, 1999, are hereby affirmed.

Dated, Washington, DC
July 16, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member