U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REBECCA O. BOLTE and U.S. POSTAL SERVICE,
POST OFFICE, Akron, OH

Docket No. 01-628; Submitted on the Record;
Issued November 15, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective October 12, 1999; and (2) whether appellant had any disability or related residuals after October 12, 1999, causally related to her accepted employment-related right shoulder strain.

The Office accepted that appellant, then a 41-year-old casual clerk, sustained a right shoulder strain during her work-related duties on April 23, 1998. In a decision dated October 12, 1999, the Office terminated appellant's wage loss and medical benefits on the grounds that the weight of the medical evidence, represented by the well-reasoned report of Dr. Moses Leeb, an Office second opinion physician, established that the April 23, 1998 work-related right shoulder strain had resolved at the time of the April 5, 1999 second opinion evaluation.[1] In a June 27, 2000 decision, an Office hearing representative affirmed the termination decision of October 12, 1999. In an August 25, 2000 decision, the Office denied appellant's request for reconsideration finding that appellant did not submit sufficient relevant evidence or legal contentions not previously considered. In an October 31, 2000 decision, the Office denied modification of its previous decision finding that the evidence submitted was insufficient to create a conflict with Dr. Leeb's reports. The instant appeal follows.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof in terminating appellant's compensation benefits effective October 12, 1999.

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.[2] 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

[1] On August 20, 1999 the Office issued a notice of proposed termination.

[2] *Lawrence D. Price*, 47 ECAB 120 (1995); *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

has ceased or that it is no longer related to the employment.[3] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[4] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[5]

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.[6]

In this case, the Office accepted appellant sustained a right shoulder strain from her April 23, 1998 work-related injury. The Office paid appropriate medical benefits and subsequently referred appellant to Dr. Moses Leeb, a Board-certified orthopedist, for a second opinion evaluation. The Board finds that at the time it terminated compensation benefits effective October 12, 1999 the weight of the medical evidence rested with Dr. Leeb.

In an April 5, 1999 report, Dr. Leeb, based upon a review of the records, statement of accepted facts and physical examination of April 2, 1999, opined that there was no residual objective evidence of the initial allowed condition of sprain of the right shoulder as there was no objective evidence of impairment of function of the right shoulder. He noted that the May 1, 1998 x-rays revealed no abnormalities and a review of Dr. Lippitt's consultation report of July 20, 1998 revealed a normal neurologic examination and, although the x-rays at the time revealed a "type-III hooked acrominion morphology" which anatomically could cause impingement, Dr. Lippitt reported no actual signs of impingement and had opined that an MRI evaluation for cuff pathology was not indicated due to the location of the symptoms in the posterior shoulder musculature. Dr. Leeb noted that appellant's complaints were limited to shoulder pain aggravated by elevation and rotational movement. Physical examination revealed no swelling in the right shoulder or evidence of atrophy, no tenderness of the acromioclavicular or shoulder joint, although slight tenderness over the trapezious muscle was noted. Range of motion of the right shoulder was full and appellant was able to abduct the shoulder 90 degrees with resistance. The range of motion of the right shoulder and the grip strength of the right hand were also noted to be at least equal to that of the unaffected left extremity. Neurologic examination was within normal limits with no objective evidence of motor or sensory deficit. Dr. Leeb recommended no further treatment based on the essentially normal physical examination of the right shoulder and opined that appellant could return to her regular duties as a clerk.

[3] *Id*; *see Patricia A. Keller*, 45 ECAB 278 (1993).

[4] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[5] *Id.*

[6] *See Connie Johns*, 44 ECAB 560 (1993).

Dr. Leeb 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 no objective evidence of impairment of function of the right shoulder and was capable of performing her usual employment without restriction and that further medical treatment was unnecessary. In a June 11, 1999 report, Dr. Deanna Haun-Hita, appellant's treating orthopedic physician, reviewed a copy of Dr. Leeb's report and stated that she agreed with Dr. Leeb. Objectively appellant appears to be intact and her shoulder strain apparently resolved. Dr. Haun-Hita stated that she did not do further diagnostic testing on appellant and that her request for pain management was based on subjective complaints secondary to the fact that pain is for the most part subjective. A September 20, 1999 Form CA-20 from Dr. Kenneth Bulen, an associate of Dr. Huan-Hita and also an orthopedic physician, indicated that appellant could return to regular duty on September 1, 1999. This is consistent with Dr. Leeb's opinion.

The Board finds that Dr. Leeb's report established that appellant ceased to have any disability or condition causally related to her April 23, 1998 employment injury.[7]

In a September 30, 1999 report, Dr. Robert H. Bell, a Board-certified orthopedic surgeon, noted a history of appellant's work injury and her medical treatment. Findings on physical examination as well as x-ray films were provided. Dr. Bell opined that he was uncertain of the etiology of appellant's discomfort, but stated that he believed that her rotator cuff was intact. Recommendations for strengthening of the periscapular musculature and obtaining neurodiagnostics to rule out any other associated vascular neurologic disorder were provided. As Dr. Bell did not provide any objective findings of a shoulder condition, his report is insufficient to create a conflict with or outweigh the report of Dr. Leeb.

In a February 15, 2000 report, Dr. April S. Zink, a chiropractor, noted the history of injury and appellant's medical treatment along with her current complaints. Dr. Zink indicated that the results of her examination, which revealed weakness of the musculature of appellant's right shoulder, and opined that the symptoms exhibited by appellant were directly related to her work injury. There is no showing within Dr. Zink's report that she took x-rays of appellant's shoulder, had diagnosed a subluxation, and was treating a subluxation. Section 8101(2) of the Act[8] provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated by x-ray to exist. As Dr. Zink's report does not contain a diagnosis of subluxation as revealed on x-ray, Dr. Zink is not a physician for the purposes of the Act and her opinion regarding causal relation is not probative.

The reports of Dr. Michael Pryce, an orthopedic surgeon, are also insufficient to create a conflict with the report of Dr. Leeb. In a February 23, 2000 report, Dr. Pryce noted a history of the work injury and stated that all of appellant's work-up to date has been negative. Physical examination revealed good passive and active range of motion. Negative impingement sign was noted. However, when appellant elevates her shoulder, a visual and palbable and audible shoulder pop is present as it jumps over something in the shoulder. Dr. Pryce stated that it

[7] *See Joe Bowers*, 44 ECAB 423 (1993).

[8] 5 U.S.C. §§ 8101-8193, 8101(2).

appears as if the shoulder is subluxating anterior and superior. He stated that appellant has a hyperlaxed shoulder, a subluxating shoulder at the very least, if not a true Bankhart's type lesion or a SLAP-type lesion. A negative Jobe's sign, negative impingement sign was noted, but appellant was observed to have instability in her shoulder actively, which Dr. Pryce noted he had difficulty doing passively. Good strength was noted in external rotation of the rotator cuff, a four out of five muscle strength was noted in external rotation and in the elevation of abduction areas. X-rays revealed a little bit of elevation of the humeral head. Dr. Pryce opined that appellant has an internal derangement of the shoulder which could be a glenoid labrum pathology or a true subluxation of the shoulder following the work injury. An MRI arthrogram was recommended to determine appellant's course of treatment. In reports of March 17, 2000, Dr. Pryce stated that the MRI arthrogram showed no evidence of glenoid labrum tear and no rotator cuff tear. He diagnosed either a subluxation or a dislocation of the shoulder and provided lifting restrictions. He stated that the capsule is stretched out and appellant has anterior and superior instability in the shoulder. Arthroscopy with capsular shrinkage was recommended. Dr. Pryce opined that the injury appellant sustained on April 23, 1998 was responsible for the pathology present in her shoulder. In an August 23, 2000 report, Dr. Pryce reiterated his opinion that appellant has a subluxating shoulder, which is a capsular laxity of some kind, which came from the original injury. He stated that, although the MRI showed no injury to the glenoid labrum, a laxed capsule cannot been seen on an MRI. Dr. Pryce stated that his physical examination findings should be considered as objective evidence as he does not make decisions to operate on people strictly through the use of x-rays or MRIs.

Although Dr. Pryce opined that appellant's current condition of capsular laxity is causally related to her work injury, his reports are insufficient to create a conflict with the report of Dr. Leeb, who opined that appellant does not have any continuing residuals of her work injury. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty, explained by medical rationale and based on a complete and accurate factual background.[9] Although Dr. Pryce has provided objective evidence of appellant's condition, he has failed to provide allegation medical rationale supporting his opinion on causal relationship, such as explaining how or why appellant's current medical condition could have arisen from her work injury. As Dr. Pryce did not provide any supporting medical rationale for his conclusion or discuss the effects of the previous lack of objective findings, his opinion is of little probative value.[10]

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

[10] *Jacquelyn L. Oliver,* 48 ECAB 232 (1996) (medical conclusions unsupported by medical rationale are of diminished probative value).

The decisions of the Office of Workers' Compensation Programs dated October 31, August 25 and June 27, 2000 are affirmed.

Dated, Washington, DC
November 15, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member