

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LINDA J. TOWERS and U.S. POSTAL SERVICE,  
CHICAGO BULK MAIL CENTER, Forest Park, IL

*Docket No. 00-2433; Submitted on the Record;  
Issued October 10, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective August 11, 1999.

On May 6, 1996 appellant, then a 31-year-old part-time flexible mailhandler, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that she injured her right shoulder when she was picking up a package. By letter dated May 20, 1996, the Office accepted appellant's claim for right shoulder impingement syndrome. Subsequently, the Office approved two surgeries for appellant's right shoulder. The record also indicates that appellant sustained a previous injury while playing volleyball on August 5, 1995.

A right shoulder acromioplasty and rotator cuff exploration was performed by Dr. John B. McClellan, a Board-certified orthopedic surgeon, on December 17, 1998 and no rotator cuff tear was found. In a medical report dated February 12, 1999, Dr. McClellan noted that appellant's diagnosis was recurrent impingement syndrome, right shoulder and that he anticipated that she may be ready for sedentary work by March 15, 1999 and that they were hopeful that she would be ready for full duty by May 1, 1999. However, on March 15, 1999, Dr. McClellan noted that appellant had continuing complaints of pain and noted that she would be ready for limited duty (left hand only) on April 5, 1999.

By letter dated April 2, 1999, the Office referred appellant to Dr. Richard H. Sidell, Jr., a Board-certified orthopedic surgeon, for a second opinion. In a medical report dated April 20, 1999, Dr. Sidell diagnosed appellant as "status post redo acromioplasty with possible inadequate resection of distal clavicle and resistant acromioclavicular [AC] joint arthropathy." He believed that appellant's present upper extremity medical condition was due to her volleyball injury she incurred nine months prior to her work incident. Dr. Sidell explained, "The employees condition was temporarily aggravated at the injury date of May 4, 1996, with the temporary aggravation ceasing within one [to] three weeks after onset." With regard to her work restrictions, he opined that appellant was currently able to work on a restricted basis only.

On April 30, 1999 the Office issued a notice of proposed termination wherein it stated that the medical evidence demonstrated that her work-related right shoulder condition had ceased. The Office noted that they gave the greatest weight to the opinion of Dr. Sidell.

By decision dated August 11, 1999, the Office terminated appellant's benefits.

By letter dated August 24, 1999, appellant requested a hearing. At the hearing held on February 24, 2000, appellant agreed that she was not totally disabled but stated that her pain was worse now than before she had her first surgery. At the hearing, appellant submitted a medical report dated February 2, 2000, wherein Dr. McClellan summarized her treatment, noted appellant had some residual weakness and stated that she was still being treated.

Subsequent to the hearing, appellant submitted a medical report dated August 23, 1999, wherein Dr. McClellan stated:

"I have reviewed the medical records dating back to August of 1995 and that, is when Dr. Richard [T.] Beatty initially treated you for shoulder pain. I noted in Dr. Beatty's notations that, your shoulder pain was after playing volleyball, however, it had actually started three weeks prior to that and is in Dr. Beatty's notes. After medical work-up etc., it appeared that you have the diagnosis of impingement syndrome. This has been verified not only by Dr. Beatty but, myself. Impingement syndrome is where the tendons of the rotator cuff rubs against the acromion and the distal clavicle. This mechanical rubbing eventually causes some tendinitis or signs of excessive aging and wear and tear of the rotator cuff. Obviously, this did not occur from one game of volleyball, but occurred through multiple cycles of abduction or raising the arm above the shoulder level. Obvious, once again, this did not occur from one game of volleyball and I would not anticipate the volleyball to be the "cause" of impingement syndrome unless you were a professional volleyball player who would practice the game virtually everyday. So, therefore, we feel that, even the etiology is in question, your job in the [employing establishment] as a mailhandler at least contributed to if not exacerbated the impingement syndrome."

Appellant also submitted a medical report dated September 25, 1999, wherein Dr. Beatty, an osteopath, reviewed his treatment of appellant. He noted that appellant initially saw him on August 30, 1995, when she complained that she had been in pain for three weeks before she injured her shoulder playing volleyball. Dr. Beatty noted that the volleyball injury precipitated an episode of acute pain for which he saw her. He further noted:

"The real question is to whether or not the patient's volleyball injury had anything to do with the surgical procedure. It is my opinion that the patient's history which I garnered on the first day that I saw her that she had pain in her shoulder for about three weeks before she injured herself playing volleyball was due to the beginning of an impingement syndrome which was apparently aggravated by her work activities. She was subsequently treated for the volleyball injury and improved to the point where she was able to go back to work with a 50 pounds lifting restriction and no overhead use. The patient was then asked to exceed the

restrictions and caused her shoulder pain to increase and the second increase and a failure to get back to her previous activity level is what precipitated the surgery. The arthritic spurs at the AC joint which were present on the x-rays were present way before the volleyball injury. The patient complained of pain three weeks before the volleyball injury according to the history which I obtained. The patient, therefore, apparently had a degenerative AC joint and acromion, which was causing an impingement type syndrome and her work activities, which involved lifting 70 pounds and overhead use of the right shoulder would definitely have aggravated this type of condition irrespective of the volleyball injury. I do not believe that the impingement syndrome was caused by her employment but rather aggravated by the activities involved in her employment.”

In a decision dated May 17, 2000 and finalized May 22, 2000, the hearing representative, giving greater weight to the opinion of Dr. Sidell, found that the Office properly justified their decision to terminate appellant’s entitlement to compensation benefits and affirmed the decision of the Office.

The Board finds that the Office did not meet its burden of proof in terminating appellant’s compensation effective August 11, 1999.

Once the Office accepts a claim, it has the burden of proof of justifying modification or termination of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to employment.<sup>1</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability to terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>2</sup>

In the instant case, the Board finds a conflict in the medical evidence between appellant’s treating physicians, Drs. McClellan and Beatty and Sidell, the second opinion physician. These physicians are in disagreement as to whether appellant had any residual disability from his accepted work injury. Dr. Sidell concluded that appellant’s medical condition was only temporarily aggravated by her work injury and that the aggravation ceased within one to three weeks of onset. He stated that her condition appeared to be directly related to a sports injury nine months prior to the work injury date. However, Dr. McClellan noted that appellant’s impingement syndrome “did not occur from one game of volleyball, but occurred through multiple cycles of abduction or raising the arm above the shoulder level. He opined that her job for the employing establishment “contributed to if not exacerbated the impingement syndrome.” Similarly, Dr. Beatty opined that he believed appellant’s impingement syndrome was aggravated by the activities involved in her employment. Because there is a conflict between appellant’s treating physicians and the second opinion physician regarding the cause of appellant’s continuing disability, a conflict in medical opinions existed.

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<sup>1</sup> *Martin T. Schwartz*, 48 ECAB 521-22 (1997).

<sup>2</sup> *Id.*

Where there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination.<sup>3</sup> Based on the above-referenced conflict in the medical evidence between Dr. Sidwell and appellant's treating physicians, the Board finds that the Office should have referred appellant's case for an impartial medical examination. The Office, therefore, improperly terminated benefits effective April 11, 1999.

The decisions dated May 17, 2000 and finalized on May 22, 2000 and dated August 11, 1999 of the Office of Workers' Compensation Programs are reversed.

Dated, Washington, DC  
October 10, 2001

Michael J. Walsh  
Chairman

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>3</sup> 5 U.S.C. § 8123(a); *see also Lawrence C. Parr*, 48 ECAB 445, 453 (1997).