

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JESSE G. MARTINEZ and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Houston, TX

*Docket No. 02-338; Submitted on the Record;
Issued June 17, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issue is whether appellant had any employment-related disability after January 31, 1996.

The case has been on appeal twice previously.¹ In a July 3, 1997 decision, the Board noted that appellant claimed to have sustained a right shoulder injury while sorting magazines at the employing establishment. Appellant's supervisor claimed that his light-duty job did not require him to sort magazines. The Board indicated that appellant's claim arose from an August 13, 1986 employment injury to his right shoulder, which was accepted for a torn rotator cuff. The Board instructed the Office of Workers' Compensation Programs to combine the record from appellant's 1994 claim for an injury to his right shoulder with the record from his claim for the August 13, 1986 employment injury. The Board ordered the Office to obtain further medical evidence on whether appellant's work duties in the light-duty position caused or contributed to any change in the nature or extent of appellant's right shoulder condition. In an October 23, 2000 decision, the Board found that there existed a conflict in the medical evidence on whether appellant had a torn rotator cuff and whether appellant would have been able to return to his light-duty position effective January 31, 1996. The Board remanded the case for referral of appellant to an appropriate impartial medical specialist for an examination, diagnosis of appellant's condition and an opinion on whether he could perform his light-duty position as of January 31, 1996 or at some later point.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Richard W. Leong, a Board-certified orthopedic surgeon, for an impartial medical examination. In a February 21, 2001 report, Dr. Leong reported that appellant had tenderness over the right acromioclavicular joint and over the anterior border of the right acromion. He noted that palpation of the right subcoracoid area caused a numb sensation in the right hand.

¹ Docket No. 99-1669 (issued October 23, 2000); Docket No. 95-1355 (issued July 3, 1997). The history of the case is contained in the prior decision and is incorporated by reference.

Dr. Leong also found mild tenderness over the bicipital groove and slight tenderness over the sternoclavicular joint. He reported inconstant popping sensations in motion of the right shoulder. Dr. Leong indicated that pain in appellant's right shoulder began at the end of the ranges of action motion, with the pain continuing in the passive ranges of motion. He stated that there was no evidence of posterior instability in the right shoulder but found a suggestion of mild anterior subluxation of the right shoulder without evidence of apprehension. Dr. Leong indicated that appellant had pain on three impingement tests. He stated that x-rays of the right shoulder were compatible with prominent degenerative arthritis of the glenohumeral joint, with bone spurs involving both the humeral head and the glenoid cavity; irregularity of the acromial process compatible with impingement syndrome and the surgical procedure of partial acromionectomy; and advanced degenerative arthritis of the acromioclavicular joint. Dr. Leong noted that cervical x-rays showed generalized advanced spondylosis with stenosis of neuroforaminal canals while thoracic x-rays showed generalized spur formation at all thoracic disc levels, compatible with degenerative disc disease of the thoracic spine. He noted that a magnetic resonance imaging (MRI) scan of the cervical spine showed a posterior disc herniation at C6-7 and bilateral neuroforaminal canal stenosis crowding the C7 nerve root; a small disc herniation at C4-5; and generalized degenerative changes in all the cervical discs, worse at C4-5, C5-6 and C6-7. Dr. Leong reported that an MRI scan of the right shoulder showed incomplete partial tears on the articular surface of the rotator cuff; severe degenerative arthritis of the acromioclavicular joint; degenerative arthritic spurs around the periphery of the glenoid cavity and humeral joint; questionable fracture involving the anterior portion of the acromion; and tenosynovitis of the long head of the biceps. He stated that an electromyogram (EMG) of appellant's neck and right arm was normal. Dr. Leong diagnosed severe degenerative arthritis of the acromioclavicular joint, moderately severe degenerative arthritis of the glenohumeral joint, impingement syndrome, degenerative rotator cuff with incomplete tears, secondary to the arthritis in the shoulder, mild anterior instability in the right shoulder, cervical disc herniations, degenerative arthritis and disc disease of the cervical spine, irritative cervical radiculitis, thoracic outlet syndrome and degenerative arthritis and disc disease of the thoracic spine.

Dr. Leong stated that the arthritis of the acromioclavicular and glenohumeral joints were the cause of appellant's pain and painful limited shoulder motions. He commented that the shoulder impingement syndrome and degenerative rotator cuff with incomplete tears were secondary conditions caused by the primary arthritic conditions. Dr. Leong stated that appellant's injury dates August 13, 1986 and January 23, 1994 were not associated with a history of trauma. He indicated that the record of recurrent shoulder pains as well as his reported pain caused by the injury were compatible with his shoulder arthritis. Dr. Leong commented that the degenerative arthritis and disc disease of appellant's cervical spine with two cervical disc herniations, contributed to the shoulder pain. In response to the Office's questions, he noted that appellant's claim was accepted for a strain of the right shoulder. Dr. Leong stated that a strain of the shoulder involved stretching injury or overuse injury involving the muscles, ligaments and capsular wall of the shoulder. He indicated that these injuries were small and should recover with decreased use or rest. Dr. Leong commented that more severe injuries of the soft tissue would be classified as sprains. He stated that recovery from a strain would be anywhere from one day to three weeks. Dr. Leong indicated that an uncomplicated shoulder strain should not cause a tear of the rotator cuff. He stated that if a rotator cuff tear occurs with a strained shoulder injury there has to be complicating factors causing degenerative changes in the rotator cuff to permit a tear, such as impingement or arthritis. Dr. Leong concluded that appellant did

not exhibit any clinical or objective residuals of the work related August 13, 1986 employment injury, accepted for a right shoulder strain. He stated that appellant's complaints and physical findings were due to the degenerative arthritis of the shoulder. Dr. Leong noted that appellant had undergone two operations on the right rotator cuff, both of which had healed. He indicated that the MRI scan showed several incomplete partial tears of the articular surface of the rotator cuff, tenosynovitis of the long head of the biceps and degenerative arthritis of the acromioclavicular joint and glenohumeral joint. He stated that these findings should not prevent appellant from performing the limited-duty position at the employing establishment. On the issue of whether appellant's condition worsened in January 1994 due to his limited-duty employment. Dr. Leong indicated that appellant had major surgery on the right shoulder July 13, 1994. He noted that Dr. Jeffrey Tucker had indicated that appellant reached maximum medical improvement January 31, 1996 and could return to light-duty work at that time. Dr. Leong stated that the period set by Dr. Tucker was over two years after his last major surgery to his right shoulder. He concurred with Dr. Tucker's opinion that appellant had reached maximum medical improvement on January 31, 1996 and could return to work at that time. Dr. Leong stated that the cause of appellant's degenerative arthritis of the right shoulder was unknown. He stated that the arthritis was not aggravated by appellant's limited-duty work. However, in summarizing his report, Dr. Leong stated that his report did not express an opinion on whether appellant's arthritis was aggravated by his work. He stated that appellant was able to return to the light-duty position he held at the time he stopped work.

In a March 1, 2001 decision, the Office found that the weight of the medical evidence established that appellant's work-related disability ceased no later than January 31, 1996. Appellant requested a written review of the record by an Office hearing representative. In an October 5, 2001 decision, the Office hearing representative affirmed the Office's March 1, 2001 decision.

The Board finds that the weight of the medical evidence establishes that appellant's employment-related disability ceased effective January 31, 1996.

Once the Office accepts a claim, it has the burden 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 is no longer related to the employment injury.² The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant. The burden is on the Office with respect to the period subsequent to the date when compensation is terminated or modified.³ The Office has met that burden in this case.

Dr. Leong, in an extensive report, indicated that appellant's condition was due primarily to degenerative arthritis of the right shoulder, which caused impingement and some tearing in the right shoulder. He indicated that the employment injuries were accepted for shoulder strains,

² *Edwin Lester*, 34 ECAB 1807 (1983).

³ See *George J. Hoffman*, 41 ECAB 135 (1989); *Raymond M. Shulden*, 31 ECAB 297 (1979); *Anna M. Blaine (Gilbert H. Blaine)*, 26 ECAB 351 (1975).

which would have resolved within three weeks. He noted that appellant had recovered from the two operations on his shoulder. While Dr. Leong gave contradictory statements on whether the employment injuries aggravated appellant's cervical and shoulder conditions, he indicated that he concurred with Dr. Tucker, that appellant was able to return to work January 31, 1996. In situations when there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁴ In this case, Dr. Leong presented an extensive, well-rationalized report, based on a thorough examination of the record and an accurate history of appellant's condition. His report is entitled to special weight and in the circumstances of this case constitutes the weight of the medical evidence.

The decisions of the Office of Workers' Compensation Programs dated October 5 and March 1, 2001 are hereby affirmed.

Dated, Washington, DC
June 17, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member

⁴ *James P. Roberts*, 31 ECAB 1010 (1980)