

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**MARK E. STRINGER, Appellant**

**and**

**U.S. POSTAL SERVICE, BULK MAIL  
CENTER, Long Beach, CA, Employer**

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**Docket No. 04-1866  
Issued: December 2, 2004**

*Appearances:*  
*Thomas Martin, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On July 22, 2004 appellant timely filed an appeal from an April 21, 2004 merit decision of the Office of Workers' Compensation Programs which denied modification of a December 4, 2002 decision which terminated appellant's compensation. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUES**

The issues are: (1) whether the Office properly terminated appellant's compensation, and (2) whether appellant has met his burden of proof to establish that he remains disabled due to the employment injury.

**FACTUAL HISTORY**

On June 14, 2002 appellant, then a 38-year-old mail processor, filed a claim for a traumatic injury, stating that on June 11, 2002 he had right lateral epicondylitis, right shoulder strain, and strains in other sites in the shoulder and upper back. He attributed his condition to

working on a destination bulk mail center sorting machine, which required him to sweep and lift heavy mail on the machine.

Appellant submitted a June 13, 2002 report from Dr. John Foster, a specialist in occupational medicine, who diagnosed right lateral epicondylitis, right shoulder strain and sprains of other sites in the shoulder and the upper back. He indicated that appellant could return to work that day with restrictions of no repetitive lifting over 25 pounds and no pushing or pulling over 25 pounds of force.

In an undated letter, received by the Office on July 19, 2002, appellant stated that he had been working alone on the bulk mail sorting machine for the prior six years on his tour, which ran from midnight to 8:00 a.m. He noted that, on the other shifts, two people would work on the machine, performing the same duties as he did by himself. Appellant swept the mail from the machine, which required bending and twisting. He was also required to push various types of equipment at the employing establishment, ranging from 85 pounds to 467 pounds.

In a June 13, 2002 report, Dr. Foster provided a history of constant lifting and sweeping by appellant which required him to reach up at almost head height and pull the mail laterally across his body. Appellant indicated to the doctor that he had been doing that for years but two days prior he developed a sharp pain in his right shoulder and down his right arm. Dr. Foster noted that the pain was in the right trapezius muscle, right biceps and right forearm. He found spasm and tenderness in the right trapezius and lateral epicondyle. He diagnosed right trapezius sprain and right lateral epicondylitis.

In a July 25, 2002 report, Dr. Oscar J. Moore, an internist, indicated that appellant remained under treatment for injuries sustain while working. He noted that appellant complained of pain in the cervical spine, both shoulders, the right elbow and the lumbosacral spine. Dr. Moore reported that appellant had no musculoskeletal injuries prior to the onset of his current injury. He stated that physical examination showed marked spasm, in duration, and decreased range of motion in the cervical spine and lumbosacral spine bilaterally. Dr. Moore found marked paraspinal muscular spasms in the lumbosacral spine. He indicated that appellant had a painful range of motion of the right shoulder and right elbow. Dr. Moore noted that the neurological examination was within normal limits. He diagnosed contusions and strain of the cervical, thoracic, and lumbosacral regions of the spine, the right elbow and the right shoulder.

On August 6, 2002 the Office accepted appellant's claim as an occupational injury consisting of contusions and strains of the cervical, thoracic, and lumbosacral regions of the spine, the right shoulder and the right elbow. The Office paid temporary disability compensation effective June 19, 2002.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Bunsri T. Sophon, a Board-certified orthopedic surgeon, for an examination and second opinion. In an October 23, 2002 report, Dr. Sophon noted that appellant complained of pain in the neck and right shoulder. On examination, Dr. Sophon indicated that appellant had a normal spine with no swelling, palpable mass, inflammation or tenderness and no evidence of muscle atrophy or spasm. He reported that appellant had a full range of motion of the cervical spine. Dr. Sophon made the same findings in the right shoulder. He noted that appellant's motor

strength was within normal limits and had normal sensation bilaterally. Dr. Sophon concluded that appellant had subjective complaints of neck and shoulder pain but that he had no objective orthopedic diagnosis. He stated that the orthopedic examination was normal. Dr. Sophon commented that the subjective complaints included occasional, minimal neck and shoulder pain. He declared that appellant was not currently totally disabled, based on the normal orthopedic examination of the neck and right shoulder. Dr. Sophon indicated that appellant had no physical limitations.

In an October 29, 2002 letter, the Office proposed to terminate appellant's compensation on the grounds that the weight of the medical evidence did not support that he continued to have residuals causally related to factors of his employment. The Office gave appellant 30 days to submit any evidence or argument if he disagreed with the proposal to terminate compensation.

Appellant submitted a November 6, 2002 form report from Dr. Moore who stated that appellant had tenderness, spasm, and decreased range of motion in the cervical spine, right shoulder, and right elbow. He marked a "yes" box to indicate that he believed appellant's conditions were related to his employment. Dr. Moore diagnosed multiple contusions and strain.

In a December 4, 2002 decision, the Office terminated appellant's compensation effective that date on the grounds that the weight of medical evidence failed to establish that he continued to suffer residuals of his June 11, 2002 injury.

Appellant submitted a November 6, 2002 report from Dr. Moore that was received by the Office on December 23, 2002. He reported that appellant complained of a painful right arm, right shoulder and the right side of the cervical spine when he used his right arm. Dr. Moore stated that rotation of the cervical spine and reaching above the shoulder with the right arm caused significant pain in the right arm. He indicated that appellant continued to show muscle spasm, in duration, and limitation of motion in the right arm. Dr. Moore stated that appellant's prognosis for recovery remained positive. He commented, however, that appellant was still symptomatic and requested that he be returned to or placed on light duty with no reaching or lifting above the shoulder level with the right arm. Dr. Moore commented that the restrictions should last for a maximum of 60 days.

In a November 26, 2003 letter, appellant, through his attorney, requested reconsideration. He submitted a September 5, 2003 report from Dr. Michael D. Roback, a Board-certified orthopedic surgeon, who stated that appellant had an almost constant ache in the neck, centered on the right side. He indicated that the pain radiated to the right shoulder blade area, right forearm and right arm. Dr. Roback noted that there was frequent numbness and tingling in the neck and right arm. He reported that appellant's symptoms were increased by twisting, turning, extending, and flexing the neck, pushing, pulling, lifting, carrying, and reaching above shoulder level. Dr. Roback also indicated that appellant had a constant ache in the right shoulder that frequently radiated to the right forearm and arm. He stated that appellant had a stiff shoulder. He reported that the pain was also increased by pushing, pulling, lifting, carrying, and reaching above the shoulder with the right arm. Dr. Roback noted that appellant had intermittent pain in the right elbow and forearm with weakness and a feeling of weakness of the forearm and elbow. He commented that appellant had no neck or right shoulder symptoms before the June 11, 2002 employment incident. Dr. Roback indicated that appellant had normal neurological examination,

normal deep tendon reflexes of the arms, and normal sensation from the neck to the fingers. He stated that appellant had moderate atrophy in the right rotator cuff insertion and mild tightness in the right trapezius. Dr. Roback found tenderness to palpation in the C4-6 region, the trapezius bilaterally, and the right radial head. He indicated that appellant's cervical motion was normal. He reported that appellant had loss of strength in the right shoulder in flexion, extension, and retraction. Dr. Roback concluded that appellant had injuries to his neck, right shoulder and right elbow compatible with his description of his employment injury. He stated that appellant currently was unable to work his usual and customary job.

In an April 21, 2004 merit decision, the Office denied appellant's request for modification of the December 4, 2002 decision.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After the Office has determined that an employee has a condition causally related to his or her federal employment, it may not terminate compensation without establishing that the condition has ceased or that it is no longer related to the employment.<sup>1</sup>

### **ANALYSIS**

Dr. Foster found that appellant had pain in the cervical spine and right arm, leading to a diagnosis to cervical strain and right lateral epicondylitis. Dr. Moore found that appellant had strains and contusions of the cervical, thoracic, and lumbosacral regions of the spine, the right elbow and the right shoulder. Neither physician, however, gave a detailed explanation of their findings after physical examination of appellant and how those findings supported their conclusions that appellant's conditions were related to his employment. Their reports, therefore, have limited probative value.

Dr. Sophon conducted a thorough examination of appellant. He reported that appellant had no inflammation, tenderness, muscle atrophy, or spasms. Dr. Sophon stated that appellant had a normal range of motion in the cervical spine and right shoulder. He indicated that appellant's muscle strength and sensation was within normal limits. Based on these findings, Dr. Sophon concluded that appellant had subjective pain but no objective findings to support his claim of disability. He stated that appellant had no physical limitations that would prevent him from working. The only response to Dr. Sophon's report was the November 6, 2002 form report from Dr. Moore who marked a "yes" box to indicate that appellant's condition was causally related to his employment. Such a report has a diminished probative value when compared to a fully rationalized explanation from a physician who has a complete and accurate medical and factual history of injury, and findings on examination.<sup>2</sup> Therefore Dr. Sophon's report, as the only report based on a detailed description of findings on physical examination, has greater

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<sup>1</sup> *Jeff M. Burns*, 51 ECAB 241, 245 (1999).

<sup>2</sup> *See Ixtla Ccihuatl*, 49 ECAB 427, 429-30 (1998).

probative value than the reports of Dr. Moore and Dr. Foster. His report gave the Office a sufficient basis to terminate appellant's compensation.

### **LEGAL PRECEDENT -- ISSUE 2**

After the termination of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability which continued after termination of compensation benefits.<sup>3</sup>

### **ANALYSIS -- ISSUE 2**

After the termination of appellant's compensation, his attorney submitted a report from Dr. Roback who stated that appellant had atrophy in the right shoulder, and tenderness in the trapezius, cervical spine, and radial head, and a decrease in strength in some aspects of the motion of the right elbow. His findings therefore conflicted with Dr. Sophon. Dr. Roback related appellant's conditions to his employment but he did not give a detailed explanation on how his findings on examination would be related to appellant's accepted contusion and strains of the June 2002 employment injury, some 15 months previously. Dr. Roback's report therefore has limited probative value. Appellant also submitted a November 6, 2002 report from Dr. Moore but the report only restated the findings of Dr. Moore's earlier report and made a general statement that appellant's condition was related to his employment and was still disabling. His report, therefore, also has limited probative value. Neither report is sufficient to overcome the probative value of Dr. Sophon's report.

### **CONCLUSION**

The Office properly terminated appellant's compensation. The evidence submitted by appellant was insufficient to establish that he remained disabled due to the effects of his employment injury.

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<sup>3</sup> *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Joseph Campbell*, 34 ECAB 1389, 1396 (1983).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs, dated April 21, 2004, is hereby affirmed.

Issued: December 2, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member