

pain in her left shoulder. She came under the care of Dr. Joseph E. Cronkey, a Board-certified orthopedic surgeon, who performed testing and diagnosed a cervical disc syndrome and tendinitis of the left shoulder. On October 15, 2001 the Office accepted appellant's claim for tendinitis of the left shoulder and authorized physical therapy and a follow-up magnetic resonance imaging (MRI) scan.

Dr. Cronkey continued to submit reports and, in October 2001, appellant came under the care of Dr. Mitchell J. Gross, a Board-certified neurologist, who diagnosed possible left brachial plexus stretch injury.

Appellant claimed a recurrence of total disability on September 21, 2001 and stated that she has not returned to work since that date.

The Office continued to develop the claim and on December 5, 2001 referred appellant, together with a statement of accepted facts and the medical record, for a second opinion evaluation. She continued to submit reports from Dr. Gross. Dr. David B. Yanoff, a Board-certified orthopedic surgeon provided a second opinion evaluation on January 21, 2002. He found no objective clinical evidence of thoracic outlet syndrome. Dr. Yanoff read appellant's x-rays and MRI scans as normal. He opined that, although her symptomology suggested brachial plexopathy, the neurological examination was intact. Dr. Yanoff stated that appellant had residuals of tendinitis based on her subjective complaints of pain and limited range of motion. However, he opined that the diagnosis of brachial plexitis was based on subjective complaints of pain, noting that there were no electromyogram (EMG) or nerve conduction studies to assess her continued symptomology. Dr. Yanoff concluded that appellant was fit for limited duty with a lifting limit of no more than ten pounds.

Dr. Gross continued to advise that appellant had left upper extremity pain syndrome likely caused by a combination of shoulder tendinitis and brachial plexus dysfunction. In a work capacity evaluation also dated February 5, 2002, Dr. Gross stated that appellant could return to light duty for four hours a day and she returned for four hours a day on limited duty on February 6, 2002 and her compensation was modified accordingly.

On April 18, 2002 the Office advised a field nurse that it had accepted a recurrence of disability claim and referred the case to her to address appellant's light-duty status.

The Office paid compensation for four hours a day from March 28 to May 11, 2002 and for two hours a day from May 12 to May 29, 2002.

A July 11, 2002 left upper extremity EMG evaluation was normal. On September 20, 2002 the Office again referred appellant, her medical records, a statement of accepted facts and a list of specific questions, to Dr. Yanoff for a second opinion evaluation regarding whether she had residuals of her July 23, 2001 injury and her

March 27, 2002 recurrence. On November 2, 2002 Dr. Gross released appellant to return to work for six hours a day and up to eight hours a day as tolerated.

In a report dated November 27, 2002, Dr. Yanoff stated that he examined appellant on November 22, 2002 and noted a familiarity with the updated statement of accepted facts which noted that appellant returned to light duty for six hours a day on May 15, 2002. He related that appellant complained of diffuse pain in the left shoulder and a constant burning dysesthesias along her left forearm extending into her wrist and hand, which increased in severity with use and related that she experienced a significant increase in pain in the posterior aspect of the left shoulder after about four hours of work. Dr. Yanoff's examination revealed minimal spasm in the cervical spine but diffuse tenderness over the paracervical muscles and decreased range of motion and complaints of pain in the spine at the extremes of motion. Appellant's deep tendon reflexes were one plus at the biceps bilaterally and trace at the triceps bilaterally. Sensory examination was normal to light touch. The left shoulder had no atrophy, swelling or effusion. Active abduction was 40 degrees limited by pain, active forward flexion was 120 degrees with pain, assisted active elevation was 160 degrees with less pain. Her internal rotation was to L3 and external rotation was 50 degrees. Dr. Yanoff found normal strength of the rotator cuff and no weakness of her shoulder on internal rotation, external rotation or abduction. He noted that the MRI scans and the EMG studies were normal. Dr. Yanoff advised that the July 23, 2001 and the March 27, 2002 injuries had resolved based on the absence of significant objective findings on physical examination to suggest continuing symptoms of shoulder tendinitis. He stated that appellant's symptoms, as reported by her treating physician, were consistent with a nonwork-related neurological diagnosis and that there are no objective findings to support a continuing disability based on her work-related injuries.

In a report dated January 13, 2003, Dr. Gross stated that appellant had chronic left brachial plexopathy, fatigue related to her medicine and sleep disorder.

On February 25, 2003 the Office issued a notice of proposed termination of compensation for wage-loss and medical benefits based on the second opinion report of Dr. Yanoff who found no residuals of the July 23, 2001 work-related injury and the March 27, 2002 recurrence.

In a report dated February 24, 2003, Dr. Gross stated that appellant was working a six-hour day and that she related improvement in the left forearm but continuing left hand pain as a result of repetitive letter folding. She also related left neck and upper chest pain and left arm tenderness. Dr. Gross placed her on total disability for February 14, 2003.

On March 20, 2003 appellant, through counsel, stated that she was disabled as a result of her July 23, 2001 work-related injury and her March 27, 2002 recurrence. Appellant also stated that her claim should be expanded to include brachial plexus neuritis.

On April 2, 2003 the Office terminated appellant's compensation and medical benefits effective that day. The Office noted that Dr. Yanoff, the second opinion physician, found that she had recovered from her July 23, 2001 work-related injury and her March 27, 2002 recurrence injury of left shoulder tendinitis. The Office also noted that Dr. Yanoff found that there was no objective evidence to support appellant's subjective complaints of significant disability and pain and that the brachial plexus neuritis was not work related.¹

In a report dated April 7, 2003, Dr. Gross stated that appellant had pain at the shoulder cap with active and passive movement, tenderness and weakness along the shoulder. He also noted good cervical range of motion and mild crepitus, symmetric pulses at the wrists and no significant temperature asymmetry in the upper extremities. Dr. Gross stated that appellant had chronic pain, mostly caused by brachial plexus stretch injury with no evidence of cervical disc disease, causally related to the July 23, 2001 injury. He also noted an element of left shoulder tendinitis and restricted her to a six-hour workday. In a report dated June 3, 2003, Dr. Gross stated that appellant fell at church and was symptomatic as a result.

By letter dated July 24, 2003, appellant, through counsel, requested reconsideration and submitted a July 10, 2003 report from Dr. Gross who stated that appellant's initial injury included a neurological feature as well as tendinitis. Dr. Gross noted that appellant had residuals of her initial injury based on a neurological component and that Dr. Yanoff incorrectly discounted the neurological aspect of appellant's injury. Dr. Gross noted that there was little laboratory evidence to support a neurological abnormality, but that there was a pathology associated with the brachial plexus and continuing pain.

On August 23, 2003 the Office denied modification of its April 2, 2003 decision.

LEGAL PRECEDENT - Issue 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³

ANALYSIS - Issue 1

The Office accepted appellant's July 23, 2001 work-related left shoulder tendinitis and paid appropriate benefits. However, on November 27, 2002, Dr. Yanoff, a Board-certified orthopedic surgeon and a second opinion physician, provided a thorough,

¹ On April 11, 2003 appellant was paid compensation through to April 1, 2003.

² *Jorge E. Sotomayor*, 52 ECAB 105 (2000).

³ *Mary A. Lowe*, 52 ECAB 223 (2001).

well-reasoned and exhaustive medical review of appellant's record and a complete and detailed physical examination. He found that appellant had minimal spasms in the cervical spine; that her deep tendon reflexes were one plus at the biceps bilaterally and minimal at the triceps bilaterally; and that her sensory examination was normal to light touch. There was no left shoulder atrophy, swelling or effusion. Dr. Yanoff noted that her range of motion was normal with no weakness of the rotator cuff. He also found no weakness on internal rotation, external rotation or abduction. Dr. Yanoff further noted that the MRI scans of the shoulder and cervical spine were normal and that the EMG studies of the left upper extremity revealed no significant abnormalities.

With respect to appellant's assertion that the Office erred by not expanding her claim to include her diagnosed condition of brachial plexus, Dr. Yanoff noted that the record included no objective findings to support a diagnosis of brachial plexus and that an examination of the reports from Dr. Gross, appellant's treating physician, revealed that the diagnosis of brachial plexus was based only on her subjective complaints of pain. For example, in reports dated from February 5, 2002 to April 7, 2003, Dr. Gross diagnosed appellant with brachial plexus based only on her subjective complaints of pain. He did not support his diagnosis with objective evidence.

With respect to Dr. Gross's statement that appellant's initial injury included a neurological component, the Board notes that, in his October 29, 2001 report, Dr. Gross did not provide a definitive diagnosis fortified by a rationalized medical opinion. In fact, Dr. Gross stated that appellant had a possible left brachial plexus stretch injury. He also placed appellant on total disability that day based only on her tendinitis.

The Board further notes that Dr. Cronkey, a Board-certified orthopedic surgeon and appellant's treating physician from August 30 to October 17, 2001 and who noted neurological findings based on a quantitative sensory test (QST) evaluation, made no determination regarding whether her neurological condition was work related. Indeed, Dr. Cronkey placed appellant on disability based only on her left shoulder tendinitis.

The Board finds that the weight of the medical evidence is represented by the second opinion physician, Dr. Yanoff, who provided a complete comprehensive report based on a review of the medical records, a statement of accepted facts and a complete examination. Appellant did not submit any reports from her treating physician containing any rationale that would establish a causal relationship between her brachial plexus, her employment injury and any continuing disability after April 2, 2003. Since no rationale was provided describing or explaining a causal relationship between her current medical condition, any continuing disability and her employment, appellant has not met her burden to overcome the weight of Dr. Yanoff's report. Although appellant took exception to Dr. Yanoff's report, the Board finds that his opinion is well rationalized and based upon an accurate medical history. Accordingly, Dr. Yanoff's opinion constitutes the weight of the medical evidence regarding the termination effective April 2, 2003.

LEGAL PRECEDENT - Issue 2

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that she had disability causally related to her accepted injury.⁴ To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.⁵ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸

ANALYSIS - Issue 2

In support of her request for reconsideration, appellant submitted reports dated April 7 and July 10, 2003 from Dr. Gross. He stated that appellant was symptomatic with pain, tenderness and weakness along the shoulder which he attributed to the July 23, 2001 injury. Dr. Gross also noted normal cervical range of motion with mild crepitus, symmetric pulses at the wrists and no significant temperature asymmetry. This report does not include a rationalized medical opinion establishing that appellant was disabled from work from April 2, 2003 causally related to the July 23, 2001 employment injury. In the July 10, 2003 report, Dr. Gross stated that initial injury included a neurological feature as well as tendinitis but also noted that there was little laboratory evidence to support an injury. This report also fails to establish that appellant was disabled from work on or after April 2, 2003 causally related to appellant's July 23, 2001 work-related injury.

⁴ *Manuel Gill*, 52 ECAB 282 (2001).

⁵ *Id.*

⁶ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ *Ernest St. Pierre*, 51 ECAB 623 (2000).

CONCLUSION

Accordingly, the Board finds that Dr. Yanoff's opinion is sufficient to meet the Office's burden of proof in terminating appellant's compensation. Further, the Board finds that appellant failed to establish that she was disabled from work on or after April 2, 2003 causally related to the July 23, 2001 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 23 and April 2, 2003 are affirmed.

Issued: February 3, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member