

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

JUNG O. LEE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Seattle, WA, Employer**

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**Docket No. 01-2009
Issued: January 12, 2004**

Appearances:
Jung O. Lee, pro se
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
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 26, 2001 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated March 16, May 2 and July 11, 2001. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues on appeal are: (1) whether the Office properly terminated appellant's compensation on the grounds that she was no longer disabled and had no continuing residuals due to her work injury of March 3, 1998; and (2) whether appellant established that she suffers from cervical degenerative joint disease, shoulder tendinitis or a consequential emotional condition causally related to or aggravated by factors of her federal employment.

FACTUAL HISTORY

On March 3, 1998 appellant, then a 39-year-old clerk, filed a notice of traumatic injury alleging that she hurt her left shoulder that day in the performance of duty when she attempted to lift a heavy tub of flats from a high shelf. The Office accepted the claim for left shoulder and cervical strains. Appellant was assigned modified duty from March 3 until April 23, 1998 and

underwent a course of physical therapy. On April 29, 1998 she was examined by Dr. Kathryn Hettel, a physiatrist, who opined that she suffered from regional myofascial pain syndrome and prescribed work restrictions of lifting no more than 20 pounds floor to waist and no more than 10 pounds overhead. Appellant continued to work modified duty.

On September 28, 1998 appellant was examined by Dr. Richard McCollum, a Board-certified orthopedic surgeon, at the request of the employing establishment. He discussed her work injury and her complaints of pain after working only limited duty. Dr. McCollum reviewed x-rays of the left shoulder dated March 13 and September 22, 1998, as well as a March 13, 1998 cervical spine x-ray, all of which were interpreted as normal. He opined that appellant sustained an apparent sprain of the left shoulder due to the injury of March 3, 1998. Dr. McCollum reported that there were some nonphysiologic findings on examination and relatively marked pain behavior. He opined that there was no reason why appellant could not work a full-time job, eight hours a day, without any restrictions. Dr. McCollum opined that there was no evidence of any impairment and no need for any further treatment.

On October 6, 1998 appellant was examined by Dr. St. Elmo Newton, an orthopedic surgeon. He reported that appellant complained of pain in the neck and trapezius region, weakness in the arms and tingling in the fingers. Dr. Newton noted that these symptoms had been present since the work injury on March 3, 1998. An x-ray dated March 13, 1998 was referenced as showing mild degenerative changes in the cervical spine, but was essentially normal with respect to the left shoulder. He opined that appellant's course of treatment was difficult to predict since she tended to maximize her symptoms and complaints significantly. Dr. Newton prescribed an antidepressant, continued physical therapy and a work hardening program.

Appellant continued under the care of Dr. Hettel, who maintained that appellant should continue with modified work only. She referred appellant for a psychological evaluation on December 16, 1998 with Dr. Kris Kyro, a clinical psychologist, who opined that appellant suffered from pain disorder due to a combination of physical and emotional problems. Dr. Kyro recommended biofeedback and relaxation therapy. On March 2, 1999 Dr. Hettel noted that appellant was not much improved with physical therapy. On May 11, 1999 a magnetic resonance imaging (MRI) scan of the cervical spine was performed and showed early degenerative disc disease from C4 to C7, most severe at C5-6 on the right. On August 2, 1999 Dr. Hettel stressed that appellant's x-rays demonstrated calcified tendinitis of the shoulders which she felt was related to appellant's work injury. She requested that appellant be reassessed by an orthopedist and sought medical authorization for biofeedback training and cortisone injections. The Office, however, denied medical authorization for treatment related to tendinitis, indicating that it was not an accepted condition.

The Office subsequently referred appellant for a second opinion examination with Dr. Thomas Miskovsky, a Board-certified orthopedic surgeon, on September 2, 1999. He gave a detailed description of appellant's work history, physical findings, symptoms and complaints of bilateral shoulder, neck and back pain. He opined that appellant sustained a left shoulder and cervical strains as a result of the March 3, 1998 work injury. Dr. Miskovsky also noted that she suffered from preexisting calcified tendinitis of the right shoulder, along with degenerative changes in the cervical spine. He opined that the preexisting conditions had not been aggravated

by the work injury. According to Dr. Miskovsky, appellant's work-related left shoulder strain and cervical strain should have resolved within three months of the date of injury. He noted that the objective findings were inconsistent with appellant's exaggerated complaints of neck and shoulder pain, despite poor effort on her part in taking the tests. Dr. Miskovsky opined that appellant possibly developed some minimal tendinitis or bursitis as a consequence of her work injury, but that her condition once again should have resolved along the same time frames as the accepted strains. Dr. Miskovsky attributed appellant's symptoms to pain behavior and muscle tension problems associated with stress and anxiety. He stated that appellant was no longer disabled for work.

The Office provided Dr. Hettel with a copy of Dr. Miskovsky's report and asked whether she agreed that appellant had no work-related residuals. In a September 22, 1999 report, Dr. Hettel replied that she disagreed with Dr. Miskovsky that appellant's tendinitis was not aggravated by her work injury. She noted that appellant suffered from chronic muscular tenderness and it was possible that she may have had a repetitive strain injury because of the work at the employing establishment. Dr. Hettel maintained that appellant's worksite should be modified and that she should undergo biofeedback training and stress management training.

In order to resolve the conflict in medical opinion between Dr. Hettel and Dr. Miskovsky, the Office referred appellant for an impartial medical examination with Dr. William Thieme, a Board-certified orthopedic surgeon, on December 27, 1999 who indicated that he had an interpreter present for the examination. He discussed appellant's history of work injury and medical treatment. After reviewing medical records including the results of an MRI and x-ray reports, Dr. Thieme related appellant's symptoms and work-duty requirements. He opined that appellant had a history of left shoulder and cervical sprains as a consequence of the work injury on March 3, 1998. Dr. Thieme concluded that there were no objective findings related to the March 3, 1998, work injury, noting that appellant's x-ray and physical findings were normal. He opined that there was no evidence of any disability due to the work injury and no need for any further medical treatment of appellant's left shoulder or neck.

On July 16, 2000 the Office issued a notice of proposed termination of compensation for wage loss and medical benefits, noting that the weight of the evidence established that appellant was no longer disabled for work and that she had no residuals due to her March 3, 1998 work injury. The Office advised appellant that she had 30 days to submit additional evidence or argument if she disagreed with the proposed action.

Appellant responded to the proposed action on August 1, 2001 submitting a February 1, 2001 report from Dr. Kristin K. Schaaf, a clinical psychologist, which diagnosed major depressive disorder and stress-related symptoms due to chronic pain from the physically demanding and stressful environment of her workplace. She related incidents of harassment when appellant was allegedly told to work outside her work restrictions.

In a decision dated August 18, 2000, the Office terminated appellant's compensation effective September 2, 1999, noting that the weight of the medical evidence established that she had recovered from her accepted cervical and left shoulder strains no later than September 2, 1999. Appellant subsequently filed an occupational disease claim on

October 3, 2000 alleging that she suffered from repetitive stress injuries to the neck and shoulders due to work factors. She stated that the symptoms and issues for which she filed a new claim were an extension of her claim for a traumatic injury on March 3, 1998.

Appellant also disagreed with the Office's August 18, 2000 decision and requested a hearing, which was held on February 6, 2001. She submitted a letter dated October 9, 2000 from Dr. Kwang Lee, a chiropractor, indicating that appellant had first been examined on September 13, 2000 for neck and bilateral shoulder pain. He reported that x-rays of the cervical spine showed a narrow disc space between C5-6 and diagnosed a subluxation. Dr. Lee opined that appellant's condition was caused by work duties of a long period of time, but did not describe her specific work duties.

In a decision dated March 16, 2001, an Office hearing representative affirmed the Office's August 18, 2000 decision.

By decision dated May 2, 2001, the Office denied appellant's occupational disease claim on the grounds that she failed to establish a causal relationship between her neck and shoulder condition and the alleged work factors. She requested reconsideration and submitted additional evidence. In a decision dated July 11, 2001, the Office denied modification of the May 2, 2001 decision.

LEGAL PRECEDENT -- Issue 1

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 casually 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.¹

Section 8123 of the Federal Employees' Compensation Act² provides that, if there is a disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician to resolve that conflict.³ When a case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical opinion, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁴

ANALYSIS -- Issue 1

The Board has carefully reviewed the report submitted by Dr. Thieme, who thoroughly discussed appellant's history of injury, symptoms and work-duty requirements. He specifically

¹ *Frank J. Mela, Jr.*, 41 ECAB 115 (1989); *Mary E. Jones*, 40 ECAB 1125 (1989).

² 5 U.S.C. §§ 8101-8193.

³ *See* 5 U.S.C. § 8123; *Robert D. Reynolds*, 49 ECAB 5651 (1998).

⁴ *Wiley Richey*, 49 ECAB 166 (1997).

found that there were no objective findings related to the March 3, 1998 work injury, noting that appellant's x-ray and physical findings were normal. Dr. Thieme opined that there was no evidence of any disability due to the work injury and no need for any further medical treatment of appellant's left shoulder or cervical strain. Because his opinion is sufficiently well rationalized and based upon a proper factual background, the Board finds that it must be given special weight.⁵ Based on Dr. Thieme's reasoned medical opinion, the Office properly determined that appellant was no longer disabled and that she had no residuals due to her accepted shoulder and neck strains. Thus, the Office satisfied its burden of proof in terminating appellant's compensation.

LEGAL PRECEDENT -- Issue 2

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified 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.⁶

ANALYSIS -- Issue 2

The Board also finds that appellant failed to carry her burden of proof to establish her entitlement to compensation based on an occupational disease claim for identical conditions addressed by her traumatic injury claim. Appellant did not establish either that she suffered from a work-related neck condition or that additional work factors caused a new cervical condition. Although she submitted a report from a chiropractor, Dr. Lee, indicated that she suffers from subluxations and degenerative disc disease, there is no discussion of what specific work factors caused appellant's diagnosed condition. Similarly, Dr. Schaaf stated that appellant was injured at work on March 3, 1998 and had experienced increased pain over time, but the physician did not detail how work factors attributed to her ongoing symptoms of pain.

Appellant was advised of the factual and medical evidence required to establish her occupational disease claim for a neck condition due to work factors by Office letter dated January 3, 2001. She did not submit the necessary medical evidence including a reasoned physician's opinion as requested. Instead, appellant alluded to the fact that her neck condition was a continuation of her traumatic injury. Because she has submitted no rationalized evidence addressing the nature of her neck or shoulder condition and how it is related to work factors, she

⁵ *Id.*

⁶ *Solomon Polen*, 51 ECAB 341 (2000); *James D. Carter*, 43 ECAB 113 (1991).

is not entitled to compensation. Since appellant has failed to establish a work-related condition, she is also unable to establish that she suffers from a consequential emotional condition.⁷

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective September 2, 1999 on the grounds that she was no longer disabled and had no continuing residuals due to her work injury of March 3, 1998. The Board also finds that appellant failed to establish that she has a continuing neck condition causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 11, May 2 and March 16, 2001 are affirmed.

Issued: January 12, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ Appellant alleged that she was harassed at work since the employing establishment refused to accommodate her work injury. The Board notes that appellant's work injury was deemed to have resolved; therefore, she was no longer on medical restrictions that required accommodation. Furthermore, she has not filed an occupational disease claim alleging an emotional condition.