

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

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**WILLIAM R. McGHEE, Appellant**

**and**

**U.S. POSTAL SERVICE, BULK MAIL  
CENTER, Philadelphia, PA, Employer**

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**Docket No. 04-823  
Issued: July 8, 2004**

*Appearances:*  
*Jeffrey P. Zeelander, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On February 7, 2004 appellant filed a timely appeal from the February 5, 2004 merit decision of the Office of Workers' Compensation Programs, which denied modification of a decision which terminated his compensation benefits effective August 10, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the Office's February 5, 2004 decision.

**ISSUE**

The issue is whether appellant's medical condition or disability on or after August 10, 2002 was causally related to his accepted employment injury on or about June 18, 1996.

**FACTUAL HISTORY**

On the prior appeal of this case,<sup>1</sup> the Board affirmed the termination of appellant's compensation. The Board found that the June 4, 2002 opinion of Dr. Joseph A. Jelen, Jr., a

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<sup>1</sup> Docket No. 03-1816 (issued October 1, 2003).

Board-certified orthopedic surgeon and impartial medical specialist, represented the weight of the medical opinion evidence and established that appellant's employment-related cervical sprain, right shoulder myositis and bilateral carpal tunnel syndrome had resolved by August 10, 2002. The facts of this case are set forth in the Board's prior decision and are hereby incorporated by reference.

In a request for reconsideration received by the Office on January 23, 2004, appellant asked the Office to reinstate his compensation based on the June 9, 2003 report of Dr. Paul L. Liebert, a Board-certified orthopedic surgeon. Appellant indicated that the Office had selected Dr. Liebert as an impartial medical specialist in another case and that his opinion, therefore, carried as much weight as did the opinion of Dr. Jelen in this case.<sup>2</sup>

In a June 9, 2003 report, Dr. Liebert related that appellant injured his left shoulder in October 1994 secondary to what appellant termed "repetitive trauma." He reported that appellant then sprained his right shoulder in 1996 and, after receiving physical therapy, returned to the same limited duty he had been working since 1994. Dr. Liebert stated that appellant continued to have right shoulder and right-sided neck discomfort with associated numbness of the right hand. An incident then occurred on March 1, 2002. Appellant was lifting a case of letters with both hands from waist height to just below shoulder level when he felt a painful popping sensation in the right shoulder with subsequent sharp pain in the top of his shoulder.

Dr. Liebert described appellant's subsequent treatment and pain profile. He reviewed medical documentation, reported his findings from a June 5, 2003 physical examination and offered the following assessment:

"There is some question in this examiner's mind as to exactly what injury the claimant sustained on the date in question. He did not fall and did not sustain any forced overhead injury. Indeed the MRI [magnetic resonance imaging] of his right shoulder done on March 22, 2002 (approximately three weeks after the incident in question) failed to show any signaling changes consistent with acute injury, *i.e.*, fluid in the bursa or intra-articular effusion. It is clear from review of the provided records that [appellant] had prior injury to his right shoulder and was in fact on limitations at work secondary to prior shoulder injury at the time of the incident in question. Also established in the records is the fact that the claimant had ongoing symptoms with regards to an underlying degenerative condition of his right shoulder rotator cuff well before March 1, 2002. [Appellant] in fact admitted that he never recovered from prior injury to his right shoulder.

"[Appellant] has ongoing symptoms and examination findings consistent with a degenerative rotator cuff. If indeed he sustained a strain/sprain of his rotator cuff as the result of whatever happened on March 1, 2002, I would have anticipated

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<sup>2</sup> On appeal appellant raises the question of the probative value of Dr. Jelen's opinion. The Board reviewed and decided this question in its decision of October 1, 2003. That decision of the Board became final upon the expiration of 30 days from the date of the filing of the decision. 20 C.F.R. § 501.6(d). As appellant did not raise this question with the Office when he requested reconsideration, the matter is *res judicata* and is not subject to further consideration by the Board on this appeal. *Hugo A. Mentink*, 9 ECAB 628 (1958).

full recovery from that type of soft tissue injury within a six- to eight-week time frame. Assuming therefore that the claimant did sustain a rotator cuff sprain of his right shoulder of that date, he has fully recovered as of my evaluation.

“He could and in fact has returned to work with limited use of the right upper extremity but on the basis of underlying degenerative rotator cuff arthropathy. I disagree that the claimant is disabled in any way secondary to the work activity on March 1, 2002.”

In a decision dated February 5, 2004, the Office reviewed the merits of appellant’s case and denied modification of its August 7, 2002 decision to terminate compensation effective August 10, 2002. The Office found that nothing in Dr. Liebert’s report supported continuing disability in the claim under consideration. Noting that Dr. Liebert was not selected as an impartial medical specialist in this case, the Office found that the opinion of Dr. Jelen, the impartial medical specialist, constituted the weight of the medical opinion.

### **LEGAL PRECEDENT**

When the Office meets its burden of proof in justifying termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the accepted employment injury.<sup>3</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. 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 established incident or factor of employment.<sup>4</sup>

### **ANALYSIS**

As the Board noted in its prior decision, appellant returned to work on June 18, 1996 following surgery on his left shoulder. At the end of his first shift appellant called his supervisor to report that he had right shoulder discomfort. He worked limited duty from June 19 to 21, 1996, when he stopped work completely. Appellant filed a claim on July 1, 1996 alleging that he had developed a sharp pain in his right shoulder at work, that he first became aware of this condition on June 21, 1996 and that he stopped work on that date. The Office accepted this claim for the conditions of cervical sprain, right shoulder myositis and bilateral carpal tunnel

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<sup>3</sup> *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity); *Maurice E. King*, 6 ECAB 35 (1953).

<sup>4</sup> *Lee R. Haywood*, 48 ECAB 145 (1996).

syndrome. This is the injury to which the present appeal relates. The Office met its burden of proof to terminate compensation for the accepted medical conditions as the weight of the medical opinion evidence, as represented by the June 4, 2002 opinion of Dr. Jelen, the impartial medical specialist, established that these conditions resolved. The burden of proof then shifted to appellant to establish that any subsequent condition or disability was causally related to his employment injury in 1996.

The evidence submitted on reconsideration does not meet appellant's burden of proof. Dr. Liebert, an orthopedic surgeon, offered no opinion on whether appellant's condition or disability on or after August 10, 2002 was causally related to the 1996 employment injury. He addressed a different matter: whether appellant continued to experience residuals of the lifting injury sustained on March 1, 2002. Dr. Liebert's opinion was that there was some question as to what injury appellant sustained on March 1, 2002 but that, assuming he sustained a strain or sprain of the right rotator cuff, appellant fully recovered by June 5, 2003. This is immaterial to the issue on appeal in this case. Dr. Liebert mentioned that appellant had ongoing symptoms of an underlying degenerative condition of his right shoulder rotator cuff well before March 1, 2002 and that appellant had examination findings consistent with a degenerative rotator cuff, but Dr. Liebert did not relate this degenerative condition to the employment injury of 1996. Appellant might have told Dr. Liebert that he never recovered from his prior right shoulder injury, but such a lay opinion cannot establish the critical element of causal relationship. It is the physician's opinion that matters here, and Dr. Liebert's June 9, 2003 opinion does nothing to establish that appellant's medical condition or disability on or after August 10, 2002 was causally related to his accepted employment injury on or about June 18, 1996. His June 9, 2003 report has little probative value in this case.<sup>5</sup>

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that his medical condition or disability on or after August 10, 2002 was causally related to his accepted employment injury on or about June 18, 1996.

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<sup>5</sup> It is inconsequential whether the Office selected Dr. Liebert as an impartial medical specialist to resolve a conflict that arose in another case concerning a different injury. He holds no such status in the case presently under consideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 5, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member