

Dr. Joseph A. Jelen, Jr., a Board-certified orthopedic surgeon, was based on a proper factual background and was sufficiently well rationalized that it was entitled to special weight in resolving the conflict that had arisen. As such, the Board found that the weight of the medical opinion evidence established that residuals of the accepted employment injury resolved by August 10, 2002.

On July 8, 2004 the Board issued a decision finding that appellant had 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. The Board found that the medical evidence submitted by appellant did not address this issue. The facts of this case as set forth in the Board's prior decisions are hereby incorporated by reference.

On July 12, 2004 appellant requested reconsideration. He argued that the referee opinion of Dr. Jelen was unrationalized because he treated appellant's injury as traumatic and not occupational. Furthermore, appellant argued, a careful reading of Dr. Jelen's report showed that he supported the existence of ongoing residuals of the occupational injury.

In a decision dated October 19, 2004, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office found that appellant's argument had no merit because the mechanism of injury was sufficiently established. The Office further found that appellant's argument failed to establish that Dr. Jelen treated the injury as traumatic.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³

When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical 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

ANALYSIS

In his July 12, 2004 request for reconsideration, appellant attached the utmost significance to the fact that the impartial medical specialist, Dr. Jelen, described the injury as

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

occurring on June 21, 1996, when in fact appellant first reported right shoulder discomfort to his supervisor after the end of his first shift on June 18, 1996.⁵

The Board finds that appellant's argument is without merit. It is common practice to date occupational disease or illness claims according to the date of last exposure, which in this case was June 21, 1996. So it would not be surprising to see this injury described as the June 21, 1996 injury, even though it occurred from June 18 to 21, 1996.⁶ Dr. Jelen related the history of injury "according to reports of the patient," and the Board finds that this history is substantially correct. But even if Dr. Jelen were under the mistaken impression that the injury occurred during the course of a single workday or shift, as opposed to several,⁷ appellant has not explained the significance of this fact or shown how the particular duration of the accepted exposure had any bearing on Dr. Jelen's opinion. Dr. Jelen based his opinion on the nature of the duties appellant performed and on the nature of the accepted conditions. He noted that appellant tossed small bundles of mail in a repetitive fashion into a bin and developed an onset of right shoulder pain, which is factually correct. He explained that the type of trauma appellant sustained was "minor" and usually resolved quickly with appropriate care. He explained that appellant indeed recovered and returned to work on July 2, 1996, where he continued to function. He made clear that the diagnoses established in the statement of accepted facts as occurring as a result of the injury had resolved.⁸

The Board finds that Dr. Jelen's opinion is entitled to special weight. Notwithstanding appellant's argument, his opinion is sufficiently well rationalized, as the Board held previously, to establish that residuals of the accepted conditions resolved by August 10, 2002. The Board will affirm the Office's October 19, 2004 decision denying modification.

CONCLUSION

The Board finds that the Office properly denied modification of its prior decision to terminate appellant's compensation benefits effective August 10, 2002.

⁵ To be clear, appellant returned to work on June 18, 1996 at 12:50 a.m. following recuperation from surgery on his left shoulder and with a limitation of no left shoulder usage. At 9:00 a.m. he called his supervisor to report he had right shoulder discomfort. Appellant thereafter worked limited duty from June 19 to 21, 1996, when it appears he stopped work after experiencing a sharp pain in his right shoulder. Appellant described his injury as a "mishap."

⁶ When appellant went to the hospital on June 21, 1996, the history of presenting illness was reported as follows: "Work for three days -- weight 5 ounces to 1 pound repeatedly over 72 hours -- pain in right shoulder and right upper back."

⁷ See 20 C.F.R. § 10.5(q), 10.5(ee) (1999) ("occupational disease or illness" and "traumatic injury" defined).

⁸ The Office did not accept appellant's claim for long-term wear or degeneration, and therefore had no burden to establish that appellant did not suffer from such a condition. If appellant wishes to claim an occupational disease or illness of long duration, from 1978 and continuing, he may do so, but his claim must be timely and he must discharge his burden of proof to establish the essential elements of his claim. A mere acknowledgment by Office physicians, even the impartial medical specialist, of a wear and degeneration condition is not sufficient to establish a causal relationship between this degeneration and appellant's federal employment. Appellant must establish any such causal relationship in the usual manner, with rationalized, probative medical opinion evidence.

ORDER

IT IS HEREBY ORDERED THAT the October 19, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member