

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

ZENOBIA M. JENNINGS-BARNES, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chicago, IL, Employer**

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**Docket No. 04-2253
Issued: March 17, 2005**

Appearances:
Evamarie Acox-Bouie, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On September 13, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated August 11, 2004, which terminated her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits.

FACTUAL HISTORY

On June 16, 2003 appellant, then a 37-year-old mail handler, filed a traumatic injury claim alleging that on May 30, 2003 she experienced pain in her neck to the middle of her back when she stood to reach for a bag. The Office accepted her claim for cervical and thoracic strains and a left shoulder strain. Appellant stopped work on May 30, 2003 and returned to restricted duties on October 18, 2003.

Appellant's treating physician, Dr. Samuel J. Chmell, a Board-certified orthopedic surgeon, treated her beginning July 7, 2003 for her work injuries and opined that appellant had cervical strain/disc derangement and should continue her restricted duties. In a December 15, 2003 report, Dr. Chmell diagnosed rotator cuff tendinitis in her right shoulder, which he opined was a consequential injury. He further diagnosed a rotator cuff tendinitis/impingement in her left shoulder, which was likely a partial thickness rotator cuff tear. Dr. Chmell indicated opined that surgery was necessary.

In a January 28, 2004 report, Dr. Leonard Smith, a Board-certified orthopedic surgeon and an Office referral physician, reviewed a history of appellant's condition, together with a statement of accepted facts and the case file and provided findings on examination. Based on the present objective findings, he opined that appellant had recovered from the accepted cervicothoracic stain. Dr. Smith noted that there was minimal evidence of mild bursitis involving the left shoulder and some tenderness overlying the biceps tendon, but opined that there was no indication for surgery. He recommended continued treatment with nonsteroidal anti-inflammatory medication and, perhaps, interarticular injection of the shoulder. He opined that the objective findings supported a diagnosis of cervical sprain and left shoulder sprain with evidence of significant improvement or recovery. Dr. Smith also opined that the presence of degenerative arthritis in the cervical spine and the acromioclavicular (AC) joint, which may be a cause for some mild impingement was not related to the work incident. He found that appellant was capable of performing her regular work-related activities, although a functional capacity evaluation might be helpful. In a February 11, 2004 addendum report, Dr. Smith stated that the conditions resulting from appellant's May 30, 2003 work injury had improved to the point of recovery. With regard to the conditions of degenerative arthritis in the shoulder, including AC arthritis, possible impingement and subdeltoid bursitis, he reiterated these conditions and their treatment were not related to the work injury.

The Office determined that there was a conflict in the medical opinion evidence between Dr. Chmell and Dr. Smith as to whether appellant had any continuing residuals or disability causally related to her May 30, 2003 work injury. The Office referred appellant, together with a statement of accepted facts, the case file and a series of questions, to Dr. Robert A. Miller, a Board-certified orthopedic surgeon, for an impartial medical examination in order to resolve the conflict.

In a June 1, 2004 report, Dr. Miller provided a history of appellant's condition, the results of tests and findings on physical examination. He opined that she had fully recovered from her cervical and thoracic strains which occurred as a result of the May 30, 2003 incident without residual and that appellant's current symptoms were related to chronic and preexisting degenerative conditions which are only minimally limiting. Dr. Miller stated that the x-rays and magnetic resonance imaging (MRI) scans suggested no evidence of any acute symptoms of aching or soreness in her neck and pain in her left shoulder. Physical examination suggested that she was capable of performing the full-work duties of her preinjury position without any restrictions and there was no objective evidence to support a significant limiting disability. He stated that there had been a negative impingement sign throughout the numerous examinations by the several different surgeons, and that the localization of pain and symptoms which were primarily in the midline of her axial skeleton and in the trapezius area of her shoulders, did not implicate the rotator cuff. Dr. Miller stated that the mild changes found in the second MRI scan

of appellant's left shoulder were now responsible for her current symptoms and that surgery was not in her best interest, nor was it likely to relieve any of the symptoms of which she complained. Dr. Miller further advised that the degenerative changes in her spine and shoulder were not related to the May 30, 2003 incident, as seen in the first MRI scan of appellant's shoulder. He opined that she was capable of performing her preinjury position, but advised that since he was unable to ascertain how much weight she was capable of lifting, a functional capacity evaluation should be performed. Dr. Miller noted that, if appellant had limitations to lifting which were substantiated in a valid functional capacity evaluation, any physical restriction would be due to her preexisting chronic conditions.

By letter dated July 8, 2004, the Office advised appellant that it proposed to terminate her compensation and medical benefits on the grounds that the weight of the medical evidence established that she had no remaining disability or medical residuals causally related to her May 30, 2003 employment injury.

In an August 4, 2004 letter, appellant disagreed with the proposed termination of her benefits and submitted a July 24, 2004 report and work statements dated May 29 and July 24, 2004, from Dr. Chmell. He opined that she had ongoing cervical disc derangement/thoracic disc derangement and a torn rotator cuff left shoulder with AC joint arthritis and impingement for which surgery was warranted and that she should continue to work with restrictions.

By decision dated August 11, 2004, the Office terminated appellant's compensation benefits effective that day on the basis that the weight of the medical evidence established that she no longer had any conditions attributable to her May 30, 2003 work injury.

LEGAL PRECEDENT

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁴

¹ *Mohamed Yunis*, 42 ECAB 325 (1991).

² *Id.*

³ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁴ *Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, 41 ECAB 361 (1990).

ANALYSIS

In this case, the Office properly determined that there was a conflict in the medical opinion evidence between Dr. Chmell and Dr. Smith, as to whether appellant had continuing residual disability or medical conditions causally related to her May 30, 2003 employment injury, which was accepted for a cervical and thoracic strains and a left shoulder strain.

Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁵ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.⁶

In a June 1, 2004 report, Dr. Miller reviewed a history of appellant's condition and treatment, the results of tests and findings on physical examination. He opined that she had no continuing disability or medical condition causally related to her August 30, 2003 employment injury. Dr. Miller determined that appellant's x-rays and MRI scans contained no evidence of any acute symptoms in her neck and left shoulder and there was no objective evidence to support any significant limiting disability. He stated that the impingement sign had been negative throughout the numerous examinations that she had undergone, that the localization of her pain and symptoms did not implicate the rotator cuff and surgery was not warranted. Dr. Miller further opined that the degenerative changes in appellant's spine and shoulder were not related to the May 30, 2003 incident, as seen in the first MRI scans of appellant's shoulder and that she was capable of performing her preinjury position without restrictions. He further stated that, if a valid functional capacity evaluation revealed any lifting restrictions, it would be related to her preexisting chronic conditions.

The report of Dr. Miller is based upon a complete factual and medical background and establishes that appellant had no residual disability or diagnosed medical condition causally related to her August 30, 2003 employment-related cervical, thoracic strains and left shoulder strain. The Board has held that an additional report from appellant's physician, which essentially repeated earlier findings and conclusions, is insufficient to overcome the weight accorded an impartial medical examiner's report. In this case, Dr. Chmell had been on one side of the conflict in medical opinion that the impartial medical examiner resolved.⁷ As Dr. Miller resolved the conflict in medical opinion, the additional reports from Dr. Chmell are insufficient to overcome the special weight accorded the report of the impartial medical specialist.⁸ Thus, the Office properly based its August 11, 2004 termination decision on the report of Dr. Miller.

⁵ 5 U.S.C. § 8123(a); *see also* *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁶ *Sharyn D. Bannick*, 54 ECAB ____ (Docket No. 03-567, issued April 18, 2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

⁷ *Thomas Bauer*, 46 ECAB 257 (1994); *Virginia Davis-Banks*, 44 ECAB 389 (1993).

⁸ *Daniel F. O'Donnell, Jr.*, 54 ECAB ____ (Docket No. 02-1468, issued February 28, 2003).

CONCLUSION

The Board finds that the Office properly terminated appellant's wage loss and medical benefits on the basis that she no longer had any disability or residuals due to her accepted May 30, 2003 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 11, 2004 is affirmed.

Issued: March 17, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member