

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

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**MARK T. RIZZO, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Cincinnati, OH, Employer**

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**Docket No. 05-303  
Issued: April 12, 2006**

*Appearances:*  
*Mark T. Rizzo, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 15, 2004 appellant filed a timely appeal of the August 10, 2004 merit decision of the Office of Workers' Compensation Programs, which affirmed the termination of appellant's compensation and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.<sup>1</sup>

**ISSUE**

The issue is whether the Office properly terminated appellant's compensation and medical benefits effective September 8, 2003 on the basis that he did not have any remaining residuals causally related to his accepted employment injuries.

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<sup>1</sup> The record on appeal contains evidence received after the Office issued the August 10, 2004 decision. The Board may not consider evidence that was not before the Office at the time it rendered its final decision. 20 C.F.R. § 501.2. Appellant may submit such evidence to the Office with a request for reconsideration. See 20 C.F.R. §§ 10.605, 10.606 and 10.607 (1999).

## **FACTUAL HISTORY**

Appellant, a 55-year-old flat sorter machine operator, has an accepted occupational disease claim for cervical strain and right trapezius strain which arose on or about November 22, 2000.<sup>2</sup> He last worked on January 15, 2001. The Office paid appropriate wage-loss compensation and placed appellant on the periodic compensation rolls effective September 9, 2001.

In an October 26, 2001 report, Dr. Mitchell E. Simons, a Board-certified anesthesiologist and appellant's treating physician, advised that appellant's pain, which originated in the cervical spine and radiated into the right arm, could not be attributed entirely to his recognized right shoulder problems. He explained that a disc protrusion at C4-5 was responsible for at least some of appellant's pain. In a report dated November 16, 2001, Dr. Simons indicated that appellant's employment-related degenerative condition of the right shoulder either accelerated or aggravated the degeneration in his cervical spine, which included a disc protrusion at C4-5, facet arthropathy at C5-6, with narrowing of the right neural foramen and facet sclerosis at C6-7. He encouraged the Office to accept cervical facet arthropathy, cervical disc displacement and cervical radiculitis as employment related, noting that appellant did not have these problems prior to his work-related injuries.

Dr. Richard T. Sheridan, a Board-certified orthopedic surgeon and Office referral physician, examined appellant on February 6, 2002 and advised that the claim should not be expanded to include cervical degenerative disc disease. He noted that there was no evidence of cervical radiculopathy on physical examination. Dr. Sheridan also explained that the cervical changes noted on two recent magnetic resonance imaging (MRI) scans were the result of the natural aging process and were unrelated to appellant's original injuries either by way of causation, aggravation or exacerbation. According to Dr. Sheridan, appellant's right shoulder and neck sprains had resolved and the only objective physical finding was a scar from the previous right shoulder surgery. He indicated that appellant did not have any remaining residuals and did not require further medical treatment. Dr. Sheridan also stated that appellant was capable of returning to his flat sorter machine operator position without restrictions.

Dr. Simons reviewed Dr. Sheridan's findings and in an April 15, 2002 report noted his disagreement. He reiterated his earlier assessment that there was a connection between appellant's cervical and shoulder problems and this ongoing problem prevented him from returning to work. Dr. Simons also questioned whether appellant would ever be able to resume his prior duties.

The Office found a conflict in medical opinion based on the reports of Dr. Simons and Dr. Sheridan and referred appellant for an impartial medical evaluation. In a report dated August 28, 2002, Dr. E. Gregory Fisher, a Board-certified orthopedic surgeon and impartial medical examiner, noted that appellant's accepted right shoulder and neck conditions had

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<sup>2</sup> The Office combined the current claim (09-2005724) with a previously accepted claim (09-433949) for permanent aggravation of right shoulder osteoarthritis arising on June 1, 1997. The Office authorized a June 16, 1998 right shoulder arthroscopic decompression and distal clavicle resection. The respective files were combined under claim number 09-433949.

resolved. However, he also noted that for the past year and a half appellant had a chronic pain syndrome or condition over his right shoulder and arm that had not responded to conservative treatment. Appellant's physical examination was essentially normal, with his right shoulder healed incisional scar being the only positive physical finding. Dr. Fisher did not believe the claim should be expanded to include appellant's cervical degenerative disc disease as this condition was due to the natural aging process and unrelated to the original injury. He also indicated that appellant had reached maximum medical improvement and thus, did not require further medical treatment. Dr. Fisher recommended that appellant undergo a functional capacity evaluation and a work hardening program to ascertain what type of work he could perform.<sup>3</sup>

In a June 2, 2003 supplemental report, Dr. Fisher indicated that there were no remaining residuals from the cervical strain or right shoulder strain when he saw appellant on August 28, 2002. He explained that appellant's November 22, 2000 soft tissue injuries would have resolved over a period of four weeks to three months. Dr. Fisher further stated that the symptoms appellant reported over the neck and shoulder area were due to nonwork-related conditions.

On August 7, 2003 the Office issued a notice of proposed termination of compensation and medical benefits. The Office found that the weight of the medical evidence established that appellant's employment-related right shoulder trapezius strain and right neck sprain had resolved. He was afforded 30 days to submit additional evidence or argument.

In response, appellant submitted an April 1, 2003 chart note from his chiropractor, Dr. Raymond Stricker, III, who treated him for cervicothoracic pain radiating into the arm.<sup>4</sup> Appellant also submitted July 16 and August 13, 2003 treatment notes from Dr. Simons, who reported ongoing complaints of cervical pain radiating into appellant's right arm.

By decision dated September 8, 2003, the Office terminated appellant's wage-loss compensation and medical benefits.

Appellant requested an oral hearing, which was held on May 18, 2004. He submitted additional medical evidence, including recent right shoulder and cervical MRI scans. In an April 14, 2004 report, Dr. Janalee K. Rissover, a Board-certified physiatrist, diagnosed cervical degenerative disc disease with shoulder tendinitis.

In a decision dated August 10, 2004, the Office hearing representative affirmed the September 8, 2003 decision terminating compensation and medical benefits.

### **LEGAL PRECEDENT**

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>5</sup> Having determined that an employee has a disability

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<sup>3</sup> Appellant underwent a functional capacity evaluation on December 12, 2002, which revealed that he was capable of returning to his former duties.

<sup>4</sup> The Office authorized chiropractic treatment pursuant to a request by appellant's treating physician, Dr. Simons.

<sup>5</sup> *Curtis Hall*, 45 ECAB 316 (1994).

causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>6</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>7</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>8</sup>

### ANALYSIS

Where appellant claims that a condition not accepted or approved by the Office was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>9</sup> Dr. Simons believed that appellant's cervical condition was related to the accepted employment injuries. He diagnosed cervical facet arthropathy, cervical disc displacement and cervical radiculitis as employment-related conditions. Dr. Sheridan disagreed, finding that the accepted conditions had resolved and that no further medical treatment was warranted. Therefore, the Office determined that a conflict of medical opinion existed and it properly referred appellant to an impartial medical examiner.<sup>10</sup>

Dr. Fisher, the impartial medical examiner, found that appellant's accepted right shoulder and neck sprains had resolved. He did not believe that appellant's cervical degenerative disc disease was related to his employment injury, noting instead that this condition was due to the natural aging process. In a June 2, 2003 supplemental report, Dr. Fisher indicated that appellant no longer had residuals from the November 22, 2000 cervical strain or right shoulder strain because these soft tissue injuries would have resolved within three months of the time of injury. He also reiterated that appellant's ongoing neck and shoulder symptoms were due to nonwork-related conditions. The Board finds that the Office properly relied on the impartial medical examiner's reports in determining that appellant's November 22, 2000 accepted employment injury had resolved. Dr. Fisher's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed his medical records. Dr. Fisher also reported accurate medical and employment histories. Accordingly, the Office properly accorded special weight to the impartial medical examiner's findings.<sup>11</sup> As the weight of the medical evidence establishes that appellant's accepted cervical strain and right

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<sup>6</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>7</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>8</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

<sup>9</sup> *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>10</sup> The Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

<sup>11</sup> In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

trapezius strain has resolved, the Office properly terminated his wage-loss compensation and medical benefits.<sup>12</sup>

**CONCLUSION**

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective September 8, 2003.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 10, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>12</sup> Dr. Rissover did not offer an opinion regarding the cause of appellant's "cervical degenerative disc disease with shoulder tendinitis." Consequently, her April 14, 2004 report is insufficient to overcome the weight properly accorded the impartial medical examiner's findings and insufficient to create a new conflict of medical opinion.