

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

MARGARET A. JONES, Appellant

and

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

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**Docket No. 05-1958
Issued: April 21, 2006**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 September 22, 2005 appellant, through counsel, filed a timely appeal from a merit decision of an Office of Workers' Compensation Programs' hearing representative dated August 5, 2005 which affirmed the termination of her compensation benefits on the grounds that she had no continuing residuals from her accepted employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether the Office met its burden of proof in terminating appellant's compensation and medical benefits effective September 14, 2004; (2) whether appellant had disability on or after September 14, 2004 causally related to her accepted tendinitis conditions.

FACTUAL HISTORY

On August 1, 2001 appellant, a 46-year-old casual mail processor, filed an occupational disease claim alleging that on July 12, 2001 she first realized her triceps tendinitis was employment related. The Office accepted the claim for right triceps tendinitis, right shoulder

tendinitis and right elbow tendinitis.¹ On May 28, 2002 the Office placed appellant on the periodic rolls for temporary total disability.

In a letter dated January 16, 2004, the Office requested that Dr. Charles J. Kistler, a treating osteopathic Board-certified family practitioner, provide a comprehensive narrative medical report regarding the status of appellant's accepted tendinitis conditions. No response was received from Dr. Kistler.

In a letter dated January 28, 2004, the Office referred appellant for a second opinion evaluation to Dr. E. Gregory Fisher, a second opinion Board-certified orthopedic surgeon. In a report dated February 18, 2004, Dr. Fisher concluded that appellant's tendinitis conditions had resolved and that a physical examination revealed full range of motion in the right shoulder. Dr. Fisher reported 170 degrees of abduction, 170 degrees of forward flexion, 80 degrees internal rotation, 50 degrees extension and 90 degrees of external rotation in the right shoulder. In support of his conclusion that appellant's tendinitis conditions had resolved, Dr. Fisher stated that appellant "presently does not have any positive physical findings or evidence of any residuals of the allowed conditions in the claim regarding the right upper extremity." He noted that appellant was capable of returning to her date-of-injury position with no restrictions and no further medical treatment was needed for the conditions of right elbow, right shoulder and right triceps tendinitis.

In a letter dated March 4, 2004, the Office enclosed Dr. Fisher's February 18, 2004 report for Dr. Kistler to review and provide comments. Dr. Kistler was advised to submit his report by April 4, 2004. No response was received from Dr. Kistler other than a request for authorization for treatment.

On August 9, 2004 the Office issued a notice of proposed termination of compensation and medical benefits on the grounds that Dr. Fisher's February 18, 2004 report established no residuals of the work-related employment injuries of right elbow, right shoulder and right triceps tendinitis. The Office allotted appellant 30 days within which to submit any opposing evidence. Appellant did not reply within the time allotted.

By decision dated September 14, 2004, the Office terminated appellant's compensation and medical benefits effective that date on the grounds that the weight of the medical evidence rested with the Office referral physician, Dr. Fisher, who determined that she had no continuing disability or residuals resulting from her accepted tendinitis condition.

In a letter dated September 19, 2004, appellant's counsel requested an oral hearing before an Office hearing representative. A hearing was held on May 25, 2005 at which appellant was represented by counsel and testified.

On September 27, 2004 the Office received progress notes by Dr. Kistler for the period April 14 and September 21, 2004. On January 10, 2005 the Office received progress notes by Dr. Kistler for the period December 28, 2004, January 25 and March 31, 2005.

¹ Appellant was terminated by the employing establishment effective in April 2002.

Subsequent to the hearing, the Office received a June 10, 2005 report by Dr. Kistler who noted that appellant had been treated since August 1, 2001 for her tendinitis and was last seen on December 28, 2004. He noted that appellant's current symptoms included restricted motion of the right shoulder, crepitus, 15 degrees flexion and 20 degrees extension. Dr. Kistler also reported that appellant's abduction and adduction were reduced by 10 degrees. Range of motion in the right elbow was restricted with five degrees flexion and four degrees extension. He noted "weakness with a muscle function of two out of five, five being the strongest." Lastly, Dr. Kistler reported "epicondylar tenderness in the right elbow" as well as "right triceps weakness and pain with strength being diminished to two out of five." A December 14, 2001 diagnostic test revealed "subacromial space narrowing, supraspinatus tendinosis, fluid beneath the sheath of the biceps and narrowing in the joint space with pain. A December 11, 2001 x-ray interpretation revealed "right elbow with traumatic injury involving the medial epicondyle." Dr. Kistler opined that appellant continues to suffer from disabling tendinitis of the right elbow and shoulder with a possible "internal impingement of the right shoulder and right biceps-triceps area" and epicondylitis. He concluded that appellant remains symptomatic due to the lack of surgery or arthroscopy for testing. With regards to her ability to perform her date-of-injury position, Dr. Kistler opined that, "[b]ased solely upon the residuals of her positive MRI scan, her physical findings" appellant is disabled from performing the duties of this position as her restrictions have not been determined.

By decision dated August 5, 2005, the Office hearing representative affirmed the termination of benefits.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.² After it has determined that an employee has disability causally related to 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 The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

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 appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁵

² *Paul L. Stewart*, 54 ECAB 824 (2003).

³ *Elsie L. Price*, 54 ECAB 590 (2003).

⁴ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁵ *James F. Weikel*, 54 ECAB 660 (2003).

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation and medical benefits. The Office accepted appellant's claim for right triceps tendinitis, right shoulder tendinitis and right elbow tendinitis. In order to obtain a current assessment of appellant's condition, the Office referred appellant to Dr. Fisher, an Office second opinion physician, who submitted a February 18, 2004 medical report in which he provided an accurate factual and medical background. He conducted a thorough medical examination which provided full range of motion in the right shoulder and no positive findings of tendinitis in the right upper extremity. Dr. Fisher opined that appellant had no objective residuals of the employment-related right triceps tendinitis, right shoulder tendinitis and right elbow tendinitis. He further opined that she was able to perform her regular work duties as a causal mail processor without restrictions. Dr. Fisher found that no further medical treatment was necessary for the accepted employment injury. The findings of Dr. Fisher were provided to Dr. Kistler with a request that he review the report and provide comment. Dr. Kistler did not respond to the Office's inquiry.

The Board finds that, under the circumstances of this case, the opinion of Dr. Fisher is sufficiently well rationalized and based upon a proper factual background such that it is the weight of the evidence and is sufficient to justify the Office's termination of benefits. Furthermore the record contains no contrary evidence establishing any continuing disability as of September 14, 2004, the date the Office terminated compensation and medical benefits.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant.⁶ In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors.⁷ The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.⁸

⁶ See *Joseph A. Brown, Jr.*, 55 ECAB ____ (Docket No. 04-376, issued May 11, 2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

⁷ *Juanita Pitts*, 56 ECAB ____ (Docket No. 04-1527, issued October 28, 2004).

⁸ *Bobbie F. Cowart*, 55 ECAB ____ (Docket No. 04-1416, issued September 30, 2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS -- ISSUE 2

Subsequent to the September 14, 2004 termination decision, the Office received progress notes dated April 14, September 21 and December 28, 2004 and January 25 and March 31, 2005 from appellant's treating physician Dr. Kistler who also provided a June 10, 2005 report in which he opined that appellant continues to suffer from disabling tendinitis of the right elbow and shoulder with a possible "internal impingement of the right shoulder and right biceps-triceps area" and epicondylitis. A physical examination revealed muscle weakness, restricted right elbow range of motion, right triceps weakness and "epicondylar tenderness in the right elbow." He reported restricted range of motion in the right upper extremity, noted joint space narrowing accompanied by pain and added that appellant continued to be symptomatic due to lack of surgery or arthroscopy. In concluding, Dr. Kistler opined that appellant was totally disabled from performing the duties of her date-of-injury position based upon physical findings and her positive MRI scan and because restrictions had not been determined.

Dr. Kistler opined that appellant continued to have residuals and disability due to the accepted right triceps tendinitis, right shoulder tendinitis and right elbow tendinitis conditions which precluded her from performing the duties of her date-of-injury position. The Board finds a conflict between Dr. Fisher and Dr. Kistler with regard to the issue of whether appellant has any continuing residuals or disability causally related to the accepted right triceps tendinitis, right shoulder tendinitis and right elbow tendinitis conditions.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits effective September 14, 2004. The Board further finds that a conflict exists in the medical opinion evidence between Dr. Fisher, the second opinion physician and Dr. Kistler, appellant's treating physician as to whether she has any continuing residuals causally related to her accepted right triceps tendinitis, right shoulder tendinitis and right elbow tendinitis conditions. The case will be remanded for resolution of the conflict pursuant to 5 U.S.C. § 8123(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 5, 2005 is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision with regards to continuing disability.

Issued: April 21, 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