

Board found that, while she was without fault in the creation of the overpayment, appellant was not entitled to waiver of recovery. By decision dated March 10, 2004,² the Board reversed an October 21, 2003 decision of the Office affirming the January 16, 2002 termination of appellant's compensation on the grounds that she refused an offer of suitable work. The Board found that the offered position was not suitable work as there was a conflict of medical opinion regarding the job's physical restrictions. By decision dated February 7, 2005,³ the Board granted the Director's December 20, 2004 motion to remand, finding that the Office improperly issued a final overpayment decision without granting appellant's request for a precoupment hearing. The Board remanded the case to the Office for appropriate action and issuance of a proper final decision.⁴ The law and the facts of the case as set forth in the Board's prior decisions are hereby incorporated by reference.

The Office accepted that on May 4, 1994 appellant, then a 37-year-old letter carrier, sustained a right ankle strain necessitating ligament reconstruction in December 1995 and May 1996. The Office subsequently expanded the claim to include post-traumatic arthritis of the right ankle and reflex sympathetic dystrophy syndrome of the right lower extremity. Following a period of light-duty work with intermittent absences, appellant stopped work in October 1996 and did not return. She received appropriate wage-loss compensation on the daily and periodic rolls, as well as medical benefits.

Appellant received ongoing treatment for the accepted conditions through 2004. She submitted periodic reports from September 2001 to July 2004 by Dr. Thomas E. McGuire, an attending Board-certified family practitioner.⁵ He noted appellant's complaints of severe pain and paresthesias in the right lower extremity due to reflex sympathetic dystrophy syndrome, with intermittent coldness and discoloration in the limb. Dr. McGuire described her complaints of similar pain and paresthesias in the right arm and left leg, accompanied by depression. Beginning in April 2002 he noted appellant's account of falling frequently due to her right leg dragging behind her or "giving out." Appellant asserted that these falls caused left shoulder injuries. He prescribed pain medications, including narcotics.

Appellant also submitted medical reports dated October 2003 to September 2004 regarding her left shoulder by Dr. John Kastrup, an attending Board-certified orthopedic surgeon. He related appellant's account that she injured her shoulder in frequent falls due to her right leg giving out. Dr. Kastrup diagnosed left shoulder impingement syndrome with a small rotator cuff tear and subacromial bursitis. He performed arthroscopic surgery with subacromial decompression on June 18, 2004.

² Docket No. 04-199.

³ Docket No. 04-2141.

⁴ The record contains an October 6, 2005 hearing representative's decision affirming an \$11,065.05 overpayment of compensation and finding that it was waived due to financial hardship. The Board does not have jurisdiction over this decision as it was issued after appellant filed her appeal on September 26, 2005.

⁵ Appellant also submitted pain clinic chart notes dated March to November 2001 and August 24, 2004. She also submitted a January 10, 2002 test result showing severely reduced vibration detection and normal cooling detection in the right foot, "nonspecific for etiology."

The Office found a conflict of medical opinion evidence between Dr. McGuire, for appellant and a September 12, 2000 second opinion report by Dr. Daniel C. Carneval, an osteopath Board-certified in orthopedic surgery, regarding the level of work-related impairment.⁶ To resolve this conflict, the Office referred appellant, the medical record and a statement of accepted facts to Dr. Victor J. Thomas, a Board-certified orthopedic surgeon, for an impartial medical examination.⁷ The Office also requested that he determine if appellant sustained a left upper extremity condition related to the accepted right ankle sprain, post-traumatic arthritis and reflex sympathetic dystrophy syndrome.

In a September 6, 2004 report, Dr. Thomas reviewed the medical record and statement of accepted facts. He noted appellant's complaints of right lower extremity pain, swelling, temperature changes, paresthesias and instability. Dr. Thomas related that she walked with a cane during the past two years because of falling. In an August 17, 2004 examination, he observed that appellant exhibited pain behaviors and a nonanatomic sensitivity to light touch. Dr. Thomas found no evidence of any atrophy, skin changes, temperature changes, swelling, instability or other abnormality of the lower extremities. The range of right ankle motion was normal. He obtained x-rays of the right ankle that day which showed no arthritis, joint space narrowing or other abnormality. Dr. Thomas opined that the accepted right ankle sprain had resolved as it was successfully reconstructed and the arthritic lesion was completely remediated by a 1996 chondroplasty. Appellant "no longer ha[d] any findings consistent with" reflex sympathetic dystrophy syndrome. Dr. Thomas stated that she did not "require any further treatment or diagnostic studies. Appellant may return to her prior job without restriction." He opined that she "engaged in symptom magnification and [was] malingering." Dr. Thomas also opined that appellant's left shoulder condition was not attributable to the accepted right ankle injury and conditions as they had resolved completely following surgery.

By letter dated October 5, 2004, the Office advised appellant that it proposed to terminate her wage-loss and medical compensation benefits on the grounds that the accepted condition had ceased without residuals. The Office found that Dr. Thomas' September 6, 2004 report stated that there were no objective findings of any injury-related residuals and that she did not require further treatment or diagnostic studies.

In response, appellant submitted physical therapy prescription slips from Dr. Kastrup and treatment notes from a physical therapist dated July 15 to October 7, 2004 regarding the left

⁶ The Office obtained the second opinion as the record was unclear as to the extent of appellant's work-related disability. An April 12 to 14, 1999 functional capacity evaluation showed inconsistencies and self-limiting behaviors. The employing establishment's inspection service conducted video surveillance from November 17 to December 16, 1999, showing appellant walking briskly, driving a standard transmission pickup truck, pushing a grocery cart and loading and unloading her vehicle. An Office medical adviser reviewed the video and opined that apart from an occasional "minimally shortened right lower extremity stance phase," she had no impairment of the right leg. The Office then obtained a second opinion report on September 12, 2000 from Dr. Carneval, who opined that appellant's reflex sympathetic dystrophy had nearly resolved and that she could gradually return to modified duty.

⁷ In a July 1, 2004 letter, appellant, through her attorney, contended that the Office improperly required her to travel to more than 100 miles from her home near Erie, Pennsylvania to see Dr. Thomas in Pittsburgh. She did, however, attend the scheduled examination.

upper extremity. She also submitted an October 12, 2004 form electing retirement benefits through the Office of Personnel Management (OPM) in lieu of benefits under the Federal Employees' Compensation Act as of November 4, 2004.

By decision dated November 8, 2004, the Office terminated appellant's wage loss and medical compensation benefits effective November 28, 2004, on the grounds that the accepted condition had ceased without residuals. The Office found that the physical therapy documents and election form did not contain medical rationale sufficient to outweigh or create a conflict with Dr. Thomas' impartial medical opinion.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁸ Having determined that an employee has a disability 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.⁹

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹⁰ 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.¹¹

Section 8123 of the Act provides that, 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.¹² In situations where 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.¹³

ANALYSIS -- ISSUE 1

The Office accepted that on May 4, 1994 appellant sustained a right ankle strain, with subsequent post-traumatic arthritis and reflex sympathetic dystrophy syndrome. She received wage-loss compensation on the daily and periodic rolls beginning in 1994, as well as appropriate medical benefits. The Office terminated appellant's wage-loss and medical compensation

⁸ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁹ *Id.*

¹⁰ *Roger G. Payne*, 55 ECAB ____ (Docket No. 03-1719, issued May 7, 2004).

¹¹ *Pamela K. Guesford*, 53 ECAB 726 (2002).

¹² 5 U.S.C. § 8123; see *Charles S. Hamilton*, 52 ECAB 110 (2000).

¹³ *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

benefits effective November 28, 2004, based on the report of Dr. Thomas, a Board-certified orthopedic surgeon and impartial medical examiner. In his September 6, 2004 report, Dr. Thomas reviewed the medical record and statement of accepted facts. He noted detailed findings on clinical examination and obtained right ankle x-rays. Dr. Thomas explained that appellant's right ankle was stable, with normal range of motion and no evidence of arthritis by x-ray. He noted that there were no skin changes, temperature variations or other findings consistent with reflex sympathetic dystrophy syndrome. Dr. Thomas opined that appellant was malingering as her complaints had no anatomic basis.

The Board finds that, as Dr. Thomas' report is detailed, well rationalized and based upon a complete and accurate history, his opinion is sufficient to represent the weight of the medical evidence in this case.¹⁴ His opinion is of greater probative value than that of Dr. McGuire, an attending Board-certified family practitioner, who related appellant's subjective symptoms but did not provide objective clinical findings that the accepted conditions had not resolved. The Board notes that statements about appellant's pain, not corroborated by objective findings of disability do not constitute a basis for payment of compensation.¹⁵

In response to Dr. Thomas' report, appellant submitted physical therapy notes, prescription forms and an election of benefits form. As the physical therapy notes and election form were not signed or reviewed by a physician, they do not constitute medical evidence in this case.¹⁶ While Dr. Kastrup did sign the prescription forms, these documents do not contain medical rationale addressing any of the accepted conditions. Therefore, they are not relevant to appellant's claim.

Thus, the Board finds that the Office properly terminated appellant's wage-loss and medical compensation benefits effective November 28, 2004, as the weight of the competent medical evidence established that the accepted right ankle strain, post-traumatic arthritis and reflex sympathetic dystrophy syndrome had ceased without residuals.

LEGAL PRECEDENT -- ISSUE 2

The basic rule respecting consequential injuries, as expressed by Professor Larson in his treatise, is that, "when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment."¹⁷ The subsequent injury "is compensable if it is the direct and natural result of a compensable primary injury."¹⁸ With regard to consequential injuries, the Board has stated that where an injury is sustained as a consequence of an impairment residual to an employment

¹⁴ *Id.*

¹⁵ *Paul D. Weiss*, 36 ECAB 720 (1985); *John L. Clark*, 32 ECAB 1618 (1981).

¹⁶ *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁷ A. Larson, *The Law of Workers' Compensation* § 13.00 (2000).

¹⁸ *Id.* at § 13.11.

injury, the new or second injury is deemed, because of the chain of causation, to arise out of and be in the course of employment.¹⁹

As set forth above, the claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or factors of employment. As part of this burden the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing a causal relationship.²⁰

ANALYSIS -- ISSUE 2

Appellant first alleged that she sustained a left shoulder injury or condition in April 2002. She explained to Dr. McGuire, an attending Board-certified family practitioner, that she injured her left shoulder when she fell as her right leg “gave out.” These assertions constitute a claim for a consequential condition related to the accepted right ankle sprain, post-traumatic arthritis and reflex sympathetic dystrophy syndrome. The Office denied her claim for a left shoulder condition November 8, 2004 on the grounds she had not established causal relationship. Thus, it must now be determined whether appellant submitted sufficient medical evidence to establish that she sustained a left shoulder condition as a consequence of the accepted right ankle injury and conditions.

In support of her claim for consequential injury, appellant submitted reports from April 2002 to July 2004 by Dr. McGuire, an attending Board-certified family practitioner. He related her account of striking her left shoulder in frequent falls beginning in April 2002 when her right leg would give way. However, Dr. McGuire did not offer his own medical rationale affirming appellant’s explanation. She also submitted reports dated October 2003 to September 2004 from Dr. Kastrup, an attending Board-certified orthopedic surgeon. He related appellant’s account of injuring her left shoulder in falls related to her right leg. Dr. Kastrup diagnosed left shoulder impingement syndrome and performed a subacromial decompression on June 18, 2004. However, he did not provide medical rationale affirming that an objective, work-related abnormality in appellant’s right leg caused her to fall, thereby injuring her left shoulder. In the absence of such rationale, the reports of Dr. McGuire and Dr. Kastrup are insufficient to meet appellant’s burden of proof.²¹

Also, Dr. Thomas found that the left shoulder condition was unrelated to the accepted right lower extremity conditions, explaining that appellant had only subjective symptoms or was malingering. Thus, Dr. Thomas opined that appellant’s alleged propensity to fall was unrelated to the accepted right ankle sprain, post-traumatic arthritis and reflex sympathetic dystrophy syndrome.

¹⁹ *Margarette B. Rogler*, 43 ECAB 1034, 1038 (1992).

²⁰ *Brian E. Flescher*, 40 ECAB 532 (1989).

²¹ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

The Board finds that Dr. McGuire's report is of insufficient weight to create a conflict with that of Dr. Thomas. Dr. McGuire is a Board-certified family practitioner, while Dr. Thomas is a Board-certified orthopedic surgeon, a specialty more closely related to the claimed conditions. The Board has held that the report of a physician whose specialty is not in a germane area of medicine is entitled to lesser weight.²² As set forth above, Dr. Kastrup's opinion is of diminished value as he did not provide medical rationale supporting the claimed causal relationship. Thus, Dr. Thomas' opinion is entitled to the weight of the medical evidence on the issue of whether appellant established her claim for a consequential left shoulder injury.

Therefore, appellant has not established that she sustained a consequential left shoulder injury, as she submitted insufficient rationalized medical evidence to establish the asserted causal relationship.

CONCLUSION

The Board finds that the Office properly terminated appellant's wage-loss and medical compensation benefits effective November 28, 2004 on the grounds that her work-related conditions had ceased with no residuals. The Board further finds that appellant did not establish that she sustained a left upper extremity condition causally related to the accepted right ankle injury, post-traumatic arthritis and reflex sympathetic dystrophy syndrome.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 8, 2004 is affirmed.

Issued: July 26, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

²² *Beverly A. Spencer*, 55 ECAB ____ (Docket No. 03-2033, issued May 3, 2004).