

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

DAVID A. SHUTTLEWORTH, Appellant

and

**U.S. POSTAL SERVICE, GENERAL MAIL
FACILITY, Philadelphia, PA, Employer**

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**Docket No. 06-502
Issued: May 17, 2006**

Appearances:

*Jeffrey P. Zeelander, 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 December 29, 2005 appellant, through counsel, filed a timely appeal from a merit decision of a hearing representative of the Office of Workers' Compensation Programs dated January 12, 2005, which affirmed the termination of appellant's 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 in terminating appellant's medical and wage-loss compensation benefits effective January 22, 2004.

FACTUAL HISTORY

On October 22, 2002 appellant, a 41-year-old auto technician, filed a traumatic injury claim alleging that on October 21, 2002 he injured his right shoulder while lifting a rear brake drum. The Office accepted the claim for right shoulder rotator cuff tear and authorized right

shoulder arthroscopic surgery for internal derangement and labral tear repair, which was performed on February 14, 2003.

In a June 17, 2003 report, Dr. Steven J. Valentino, a Board-certified osteopathic orthopedic surgeon, diagnosed resolved right rotator cuff and status post right shoulder arthroscopic surgery. A physical examination of appellant's right shoulder revealed 135 degrees abduction, 135 degrees forward flexion, normal internal and external rotations and "no evidence of instability, impingement or sulcus." Dr. Valentino also reported normal "[e]valuations of the acromioclavicular (AC) joint, sternoclavicular joint, clavicle, subdeltoid region, rotator cuff, glenohumeral articulation and labrum." He opined that appellant had "minor residuals of his work-related injury in the form of mild restriction in range of motion" and that he was capable of working. In an attached June 17, 2003 work capacity evaluation (Form OWCP-5c), Dr. Valentino released appellant to work with restrictions including no reaching above shoulder, no climbing and a 30-pound limitation on pulling, pushing and lifting.

On July 2, 2003 the Office received therapy notes for the period June 5 to 24, 2003 by Dr. David L. Mattingly, a treating osteopath, noting pain in the right shoulder and a June 16, 2003 magnetic resonance imaging (MRI) scan of the right shoulder. A July 7, 2003 report and treatment notes by Dr. Mattingly diagnosed right shoulder pain.

In a July 7, 2003 report, Dr. John J. McPhilemy, Jr., a treating osteopath, diagnosed right glenohumeral joint degenerative disc disease, status post SARK and healed right shoulder bony Bankart lesion. He concluded that appellant was capable of performing light-duty or sedentary work.

On August 20, 2003 the Office received an undated work capacity evaluation form by Dr. Mattingly in which he concluded that appellant was unable to work.

In an August 18, 2003 report, Dr. McPhilemy noted that an MRI scan revealed "a possible loose body in the subcoracoid region" which he believed to be "a bony Bankart lesion." In an August 20, 2003 work capacity evaluation form, Dr. Mattingly indicated that appellant could perform no twisting, no reaching above shoulder, occasional bending and could work zero hours pushing, pulling, lifting and repetitive movements with his right arm.

On September 4, 2003 the employing establishment offered appellant a modified auto mechanic position based upon the restrictions set forth by Dr. Valentino. The restrictions included no reaching about the right shoulder, no climbing, pushing/pulling up to 30 pounds for the right arm and lifting up to 30 pounds for the right arm. Appellant declined the offered position on September 19, 2003.

On September 22, 2003 the Office referred appellant to Dr. Menachem M. Meller, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence found between Dr. Mattingly and Dr. Valentio regarding appellant's ability to perform the September 4, 2003 limited-duty job offer.

On September 25, 2003 the Office received an undated report by Dr. Mattingly which concluded that the September 4, 2003 limited-duty job offer exceeded appellant's physical capabilities and the physical restrictions he had set.

In an October 13, 2003 report, Dr. Meller reviewed the record, statement of accepted facts, list of questions and provided findings on physical examination. He concluded that appellant had no objective residuals of his accepted employment injury and was capable of working full time. A physical examination of the right shoulder revealed 170 degrees elevation, 160 degrees abduction and 80 degrees external rotation. Dr. Meller reported “no obvious clicking, popping or grinding, no AC joint discomfort, no cross body abduction symptoms, negative sulcus sign, negative speed’s test, no impingement including a Near and Hawkins’ impingement sign.” In support of his conclusion that appellant’s employment injury had resolved, Dr. Meller noted that appellant had no “verifiable objective clinical findings” and there were no significant findings on the MRI scan.

On October 23, 2003 the employing establishment again offered appellant the position of modified auto mechanic based upon the restrictions set forth by Dr. Mattingly. Appellant accepted the position on November 3, 2003.

On November 25, 2003 the Office proposed terminating appellant’s compensation benefits.

In a December 3, 2003 report, Dr. Mattingly noted that appellant had received a proposed notice of termination and a memorandum to the Director regarding his compensation benefits. Dr. Mattingly disagreed with the conclusion that appellant no longer had any residuals due to his accepted employment injury. While agreeing with Dr. Meller that appellant required no further medical treatment, he opined that appellant sustained a permanent impairment from the employment injury.

By decision dated January 21, 2004, the Office terminated appellant’s medical and wage-loss compensation benefits effective January 22, 2004.

On February 17, 2004 appellant requested an oral hearing, which was held on October 14, 2004.

On January 10, 2005 the Office received an unsigned December 14, 2004 report with the initials “CMA/jlk” diagnosing “recurrent symptoms with possibility of loose body in his shoulder.”

By decision dated January 12, 2005, the Office hearing representative affirmed the termination of appellant’s compensation benefits.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee’s benefits.¹ 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

¹ Paul L. Stewart, 54 ECAB 824 (2003).

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 an employee no longer has residuals of an employment-related condition, which would require further medical treatment.⁴

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

ANALYSIS

In this case, the Office properly determined that a conflict existed in the medical opinion evidence regarding appellant's ability to perform the September 4, 2003 modified auto mechanic position, which was based upon the restrictions issued by Dr. Valentino. Dr. Mattingly, appellant's treating osteopath, opined that the position failed to comply with his restrictions while Dr. Valentino, an Office referral physician, concluded that appellant was capable of working and had minor residuals from his accepted employment injury.

In a report dated October 13, 2003, Dr. Meller concluded that appellant had no objective residuals of his accepted employment injury and was capable of working. A physical examination of the right shoulder revealed 170 degrees elevation, 160 degrees abduction and 80 degrees external rotation. Dr. Meller reported "no obvious clicking, popping or grinding, no AC joint discomfort, no cross body abduction symptoms, negative sulcus sign, negative speed's test, no impingement including a Near and Hawkins' impingement sign." In support of his conclusion that appellant's employment injury had resolved, Dr. Meller noted that appellant had no "verifiable objective clinical findings" and there were no significant findings on the MRI scan.

The Board finds that the Office properly relied on Dr. Meller's October 13, 2003 report in determining that appellant's accepted employment injury had resolved. Dr. Meller's opinion is sufficiently well rationalized and based upon a proper factual background. He not only

² *Elsie L. Price*, 54 ECAB 734 (2003).

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

⁴ *James F. Weikel*, 54 ECAB 660 (2003).

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 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

examined appellant and reviewed the medical records. Dr. Meller reported accurate medical and employment histories. The Office properly accorded special weight to the impartial medical examiner's findings⁷ as the weight of the medical evidence establishes that appellant's accepted right shoulder rotator cuff tear had resolved.⁸

CONCLUSION

The Board finds that the Office properly terminated appellant's medical and wage-loss compensation benefits on the grounds that he no longer had any disability causally related to his October 21, 2002 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 12, 2005 is affirmed.

Issued: May 17, 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

⁷ 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. *Bryan O. Crane*, 56 ECAB ____ (Docket No. 05-232, issued September 2, 2005); *Gary R. Sieber*, *supra* note 6.

⁸ The December 14, 2004 report is of no probative value as although it contains the initials of "CMA/jlk" there is no indication that the author of the report is a physician. See *Merton J. Sils*, 39 ECAB 572 (1988).