

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

L.D., Appellant	)	
	)	
and	)	<b>Docket No. 06-1196</b>
	)	<b>Issued: September 27, 2006</b>
<b>HOMELAND SECURITY, TRANSPORTATION</b>	)	
<b>SECURITY ADMINISTRATION, Dallas, TX,</b>	)	
<b>Employer</b>	)	
	)	

*Appearances:*  
L.D., 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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 4, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 28, 2005 in which an Office hearing representative affirmed the termination of 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.

**ISSUES**

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective October 2, 2004; and (2) whether she met her burden of proof to establish that she had any disability or medical condition after October 2, 2004 causally related to her employment injuries.

**FACTUAL HISTORY**

On January 24, 2003 appellant, then a 38-year-old baggage screener, filed a traumatic injury claim alleging that on January 23, 2003 she injured her back while lifting a bag weighing

between 35 to 40 pounds onto a table. Appellant stopped work on January 23, 2003 and has not returned. Following development of her claim, the Office accepted the claim for a thoracic sprain, a right shoulder strain and disorders of bursae and tendons in the right shoulder. On June 6, 2003 appellant underwent right shoulder arthroscopic surgery to repair a rotator cuff tear. On June 11, 2003 the employing establishment terminated her. The Office authorized the surgery and paid appellant wage-loss compensation.

On August 5, 2003 Dr. Victor Van Phan, an orthopedic surgeon, advised that appellant could return to work with restrictions. In a November 26, 2003 report, he advised that her right rotator cuff repair was doing well with a work hardening program. Dr. Van Phan also advised that appellant had carpal tunnel syndrome of the right wrist.

In a February 10, 2004 report, Dr. Robert Chouteau, an orthopedic surgeon and Office referral physician, reviewed appellant's medical record, including a statement of accepted facts, and presented his examination findings. He diagnosed resolving right shoulder status post rotator cuff tear; traumatic anterior impingement syndrome, status post June 6, 2003 acromioplasty and repair of rotator cuff of the right shoulder; cervical and thoracic myositis; and right median nerve compression. Dr. Chouteau opined that appellant had sustained a double crush injury when she jerked the object onto the conveyor belt with her right wrist which caused tenosynovitis and subsequent median nerve compression and resulted in the associated cervical, thoracic, right shoulder, right arm and right wrist pain, dysesthesias and radiculopathy. He opined that appellant's right shoulder condition had resolved, but that she continued to have residuals of her work-related conditions. Dr. Chouteau further opined that she was able to function in a limited-duty status.

On March 2, 2004 the Office authorized a right median nerve decompression with release which appellant underwent on March 11, 2004. On April 16, 2004 the Office authorized physical therapy for the accepted condition of right median nerve compression.

In a March 31, 2004 report, Dr. Van Phan advised that he agreed with Dr. Chouteau that appellant had completely recovered from her shoulder condition. He also agreed with Dr. Chouteau that she has median nerve compression, but opined that it was premature to tell whether that condition had resolved as appellant was two weeks postsurgery. He opined that appellant was able to work modified light duty with restrictions.

Dr. Van Phan continued to submit progress reports on appellant's condition. In a June 16, 2004 report, he noted that appellant was status post three months from the right median nerve decompression and that there was some residual weakness. Dr. Van Phan recommended that she start a work hardening program, which the Office approved on July 2, 2004.

On July 7, 2004 Dr. Van Phan opined that appellant had fully recovered from her right rotator cuff repair and right median nerve decompression that she had reached maximum medical improvement and that she could return to normal duties. He noted that she had some mild strength issues subjectively, but opined that this could resolve on its own and appellant might have some permanent weakness. Dr. Van Phan released appellant to full duty and discharged her from his care.

On August 2, 2004 the Office issued a notice of proposed termination of appellant's compensation and medical benefits on the grounds that Dr. Van Phan had opined that her condition had resolved and she could return to regular duty. She was accorded 30 days within which to submit additional evidence or argument.

In an August 25, 2004 report, Dr. Van Phan opined that appellant could gain additional shoulder strength with her recent approval for work hardening. He further opined that her "so-called spasm or seizure activity" was not related to her shoulder.

By decision dated September 7, 2004, the Office terminated appellant's compensation and medical benefits effective September 4, 2004.

In a September 17, 2004 report, Dr. Van Phan reiterated that appellant had fully recovered from her right rotator cuff repair and right median nerve decompression. He noted that, although she subjectively felt that she had some weakness, he could not correlate this on clinical examination. Dr. Van Phan further noted that appellant had not completed her work hardening secondary to a nonwork-related injury to her ankle, but opined that she would be at maximum medical improvement once the work hardening program was completed.

By decision dated November 10, 2004, the Office terminated appellant's compensation and medical benefits effective October 2, 2004. The Office noted that this decision superceded its earlier decision of September 7, 2004.

Appellant disagreed with the Office's November 10, 2004 decision and requested an oral hearing which was scheduled to take place on July 14, 2005. By decision dated August 3, 2005, the Office determined that she had abandoned her request for a hearing. On August 11, 2005 appellant notified the Office that she had moved and had not received her hearing notice. She subsequently elected to obtain a review of the written record before an Office hearing representative.

New medical evidence was submitted and included an October 18, 2004 medical report from Dr. Van Phan which advised that appellant may benefit from the completion of her work hardening program. He reiterated that she could return back to work at full duties. Dr. Van Phan further noted that he would be leaving the practice at the end of October and that Dr. J. Teig Port, a Board-certified orthopedic surgeon, would take over appellant's care.

In a November 16, 2004 report, Dr. Port provided a history of the injury and treatment. He presented his examination findings and diagnosed residual right shoulder pain with bursitis in the right shoulder and residual weakness from appellant's carpal tunnel. Dr. Port stated that there were no indications for surgery at either level. He further found no objective findings to account for her level of pain and recommend that she get back on the home program for rotator cuff and scapular stabilizing exercises.

Also of record were progress reports from Dr. Port concerning appellant's right foot condition; physical therapy reports; a July 13, 2005 x-ray report of the right shoulder which

contained an impression of acromioclavicular joint calcifications which “may be degenerative;” and a September 7, 2005 progress note from the Dallas County Hospital District.

By decision dated September 28, 2005, an Office hearing representative affirmed the Office’s November 10, 2004 decision.

**LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>1</sup> 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.<sup>2</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>3</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.<sup>4</sup>

**ANALYSIS -- ISSUE 1**

The Office accepted appellant’s claim for a thoracic sprain, a right shoulder strain, disorders of bursae and tendons in the right shoulder region and a right median nerve compression. She underwent a right shoulder arthroscopic surgery on June 6, 2003 and a right median nerve decompression on March 11, 2004. Effective October 2, 2004 the Office finalized its termination of appellant’s compensation and medical benefits on the grounds that the accepted conditions had resolved. The Office, therefore, bears the burden of proof to justify a termination of benefits.<sup>5</sup>

In a March 31, 2004 report, Dr. Van Phan stated his agreement with the Office’s second opinion physician, Dr. Chouteau, that appellant had completely recovered from her shoulder condition and that she had a right median nerve compression. In a July 7, 2004 report, Dr. Van Phan released appellant to full duty as he opined that she had completely recovered from her right rotator cuff repair and right median nerve decompression. In a September 17, 2004 report, Dr. Van Phan indicated that, although appellant subjectively felt that she had some weakness, he could not correlate this on clinical examination. He noted that she did not complete her work hardening secondary to a nonwork-related injury to her ankle, but opined that she would be at maximum medical improvement once the work hardening program was completed. The Board finds that the thorough and well-rationalized

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<sup>1</sup> *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>2</sup> *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>4</sup> *Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, *supra* note 3.

<sup>5</sup> *Wila M. Frazier*, 55 ECAB \_\_\_\_ (Docket No. 04-120, issued March 11, 2004).

reports of Dr. Van Phan established that appellant's accepted conditions had resolved and her continuing medical problems were due to nonwork-related conditions.

There is no medical evidence contrary to Dr. Van Phan's findings that appellant had completely recovered from her right rotator cuff repair and right median nerve decompression. The Board finds that the weight of the medical evidence, represented by the reports of Dr. Van Phan establishes that appellant's employment-related conditions had resolved and the Office met its burden of proof in terminating her compensation and medical benefits on October 2, 2004.

### **LEGAL PRECEDENT -- ISSUE 2**

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating benefits shifts to appellant.<sup>6</sup> 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. 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.<sup>7</sup> Neither the mere fact that the disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>8</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that, following the proper termination of her compensation and medical benefits on October 2, 2004, appellant failed to establish that she had any continuing disability or medical condition causally related to her employment-related conditions.

In an October 18, 2004 medical report, Dr. Van Phan reiterated that appellant could return to work at full duties. He additionally noted that she may benefit from the completion of her work hardening program, which she had not done.

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<sup>6</sup> 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).

<sup>7</sup> *Bobbie F. Cowart*, 55 ECAB \_\_\_ (Docket No. 04-1416, issued September 30, 2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *Michael S. Mina*, 57 ECAB \_\_\_ (Docket No. 05-1763, issued February 7, 2006).

In a November 16, 2004 report, Dr. Port diagnosed residual right shoulder pain with bursitis in the right shoulder and residual weakness from her carpal tunnel. He stated, however, that there were no indications for surgery at either level and that there were no objective findings to account for appellant's level of pain. The Board, thus, finds that his report does not support a continuing employment-related condition.

The Board also notes that the record contains physical therapy reports. However, health-care providers such as physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.<sup>9</sup> The remaining medical evidence of record, such as the September 7, 2005 hospital note and the July 13, 2005 x-ray report, does not contain any opinion on the causal relationship between appellant's work condition and her reported conditions and thus, has no probative value. As previously noted, appellant's right foot condition is not work related.

### **CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective October 2, 2004. The Board further finds that she failed to meet her burden of proof to establish that she had any employment-related disability or medical condition after October 2, 2004 causally related to her work-related conditions.

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<sup>9</sup> See *Jennifer L. Sharp*, 48 ECAB 209 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 28, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board