

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

R.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lake Ariel, PA, Employer**

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**Docket No. 06-845
Issued: April 5, 2007**

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 28, 2006 appellant, through her attorney, filed a timely appeal from January 20, February 7 and 22, 2006 merit decisions of the Office of Workers' Compensation Programs finding that she was not entitled to compensation or medical benefits after September 16, 2005. 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 properly found that appellant was not entitled to compensation subsequent to September 16, 2005 on the grounds that she had no further employment-related disability; and (2) whether the Office properly terminated authorization for medical benefits effective September 16, 2005; and (3) whether appellant has established that she had continuing employment-related disability subsequent to September 16, 2005.

FACTUAL HISTORY

On September 2, 2004 appellant, then a 48-year-old rural mail carrier, filed a traumatic injury claim for injury to the muscles of her right arm and shoulder occurring on that date when the lid of an iron mailbox fell open onto her arm. The Office accepted the claim for a contusion of the right elbow and shoulder. Appellant worked in a light-duty capacity following her injury until November 27, 2004, when she stopped work and did not return. She filed a claim for compensation for intermittent disability from January 21 to October 15, 2005 and for total disability beginning January 22, 2005.

Appellant received treatment following her injury from Dr. Joseph J. Chun, an osteopath. In a report dated January 27, 2005, Dr. Chun diagnosed right shoulder pain, myofascial pain, mild tendinopathy of the biceps tendon, degenerative acromioclavicular changes, cervical sprain, cervical spondylosis, cervical degenerative disc disease with mild stenosis, bilateral carpal tunnel syndrome and fibromyalgia. He found that appellant could work light duty but noted that the employing establishment did not have work available within her restrictions.¹

In a report dated January 27, 2005, Kay L. Gendron, Ph.D., a licensed clinical psychologist, discussed appellant's employment injury and noted that she was "distressed about her pain and her limitations." She diagnosed a pain disorder due to psychological and medical factors and an adjustment disorder "with mixed emotional features secondary to significant physical impairment and medical problems."²

On April 6, 2005 the Office referred appellant to Dr. Robert A. Smith, a Board-certified orthopedic surgeon, for a second opinion evaluation. In the accompanying statement of accepted facts, the Office identified the accepted conditions as a contusion of the right arm and elbow.

In a report dated May 16, 2005, Dr. Smith found that appellant had no residuals of her accepted conditions of a contusion of the right arm and elbow. He asserted that he could not explain her continued symptoms and stated, "There appears to be symptom magnification with regard to this case and no objective, clinical or diagnostic findings that would substantiate any residuals from the work incident that happened on September 2, 2004." He opined that she could resume her usual employment without restrictions.

Dr. Chun, in a progress report dated May 25, 2005, discussed appellant's complaints of pain in the right shoulder, cervical area and upper extremity following a September 2, 2004 work injury. He found that she could work in a limited-duty capacity.

¹ A December 30, 2004 magnetic resonance imaging (MRI) scan of the cervical spine showed degenerative disc disease and small disc protrusions. A bone scan performed January 28, 2005 showed minimal degeneration in the shoulders and sternoclavicular joints. A February 7, 2005 nerve conduction study (NCS) and electromyogram (EMG) revealed mild bilateral carpal tunnel syndrome (CTS) or cervical radiculopathy. An EMG and NCS dated May 2, 2005 showed mild chronic and acute radiculopathy at C5-6.

² Dr. Gendron discussed her treatment of appellant for pain management in progress reports dated February 9, March 17 and July 18, 2005.

On July 27, 2005 the Office referred appellant for a second opinion evaluation with Dr. Pareshkumar Solguma, a Board-certified psychiatrist, on the issue of whether she sustained an emotional condition resulting from her September 2, 2004 employment injury. On August 23, 2005 the Office referred appellant to Dr. Beth Ann Cohen, a Board-certified neurologist, for an impartial medical examination to determine whether she had any residual condition due to her September 2, 2004 employment injury.

In a report dated September 6, 2005, Dr. Solguma diagnosed an adjustment disorder with mixed anxiety and depressed mood precipitated by her accepted employment injury. She noted that appellant had improved on medication and with psychotherapy. Dr. Solguma stated:

“It is my medical opinion that her psychiatric symptoms are not severe enough to preclude her from working and I believe that she can function full time as far as her psychiatric symptoms are concerned if she is released by her other specialists. I recommend that she continue with her medication regime as well as psychotherapy to improve pain management skills and adjustment to significant distress secondary to pain as well as improving her coping skills. I recommend that she receives aggressive pain management as well [as] continued treatment for her medical conditions.”

In a report dated September 16, 2005, Dr. Cohen reviewed the history of injury and the medical evidence of record, including the results of diagnostic studies. She listed findings on physical examination of the shoulder of no atrophy, instability, loss of motion, crepitus or tenderness to palpation. Dr. Cohen further found no atrophy or decreased power in the muscles of the arm and shoulder. She diagnosed status post contusion of the right arm and shoulder due to the September 2, 2004 employment injury. Dr. Cohen stated:

“It is my opinion within a reasonable degree of medical certainty that [appellant’s] current conditions and complaints cannot be attributed to the work injury. In support of this, I note the relatively mild nature of the trauma sustained by [her]. In addition, there are no objective findings on numerous diagnostic studies that she had to support any of her present complaints or exam[ination] findings. The MRI [scan] of the cervical spine showed degenerative change. It is hard to invoke how being hit in the shoulder with a mailbox would lead to a cervical spine injury. More importantly, the MRI [scan] of her right shoulder also showed predominately degenerative change. The bone scan showed only degenerative changes and was negative for findings that would be supportive of complex regional pain syndrome. Her functional capacity evaluation was 67 percent invalid. Electrodiagnostic studies were either unremarkable but limited or showed bilateral acute nerve root irritation, a finding that would be unrelated to the injury of September 2, 2004, and more likely related to her preexisting condition of fibromyalgia. She has no history or exam[ination] findings to suggest complex regional pain syndrome, and no definite objective findings substantiating any residuals from the work injury of September 2, 2004.”

The Office amended the statement of accepted facts to reflect that the accepted condition was a contusion of the right shoulder and right elbow rather than the right arm and right elbow.

The Office wrote to Dr. Smith, Dr. Solguma and Dr. Cohen informing the physicians of the error and inquiring whether the clarification of the accepted conditions altered their opinions. The Office also requested that Dr. Cohen provide the date that appellant's employment-related disability ceased. Dr. Smith, Dr. Solguma and Dr. Cohen each responded that their opinion was unaltered.

In a work restriction evaluation dated December 13, 2005, Dr. Cohen indicated that appellant could work full time in her usual employment without restrictions.

By decision dated January 20, 2006, the Office expanded its acceptance of appellant's claim to include an adjustment disorder with mixed anxiety and depressed mood, resolved. The Office found that appellant was entitled to compensation from January 22 to September 16, 2005 but was not entitled to compensation or medical benefits after September 16, 2005. The Office noted that it would separately adjudicate the intermittent periods of disability claimed for dates prior to January 22, 2005.

On January 24, 2006 appellant filed a claim for compensation on account of disability from January 7 to 28, 2006. In a decision dated February 7, 2006, the Office denied appellant's claim on the grounds that her accepted conditions had resolved.

On March 7, 2006 appellant filed a claim requesting compensation from January 21 to February 3, 2006. She submitted a progress report dated January 23, 2006 from Dr. Chun who noted that appellant was "status post work[-]related injury on September 2, 2004 with predominately right shoulder pain and right neck pain and right upper extremity pain and numbness and paresthesias." Dr. Chun diagnosed right shoulder pain likely due to rotator cuff syndrome and glenohumeral abnormality, complex regional pain syndrome, mild tendinopathy of the biceps tendon with degenerative changes, cervical strain, bilateral CTS, bilateral cervical radiculopathy at C5-6, fibromyalgia and possible right thoracic outlet syndrome. He opined that she could work with restrictions. By decision dated February 22, 2006, the Office denied appellant's claim for compensation from January 21 to February 3, 2006.

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. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

Section 8123(a) 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

³ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

a third physician who shall make an examination.⁵ The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁶ When 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.⁷

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for contusions of the right elbow and right shoulder and an adjustment disorder with mixed anxiety and depression due to an injury on September 2, 2004. Appellant worked limited duty following her employment injury until November 27, 2004, when she stopped work and did not return. In a decision dated January 20, 2006, the Office found that she was entitled to compensation for total disability from January 22 to September 16, 2005.⁸ The Office denied compensation after September 16, 2005 on the grounds that the weight of the evidence showed that appelloant had no further employment-related disability after that date.

The Office properly determined that a conflict in medical opinion existed between Dr. Chun, appellant's attending physician, and Dr. Smith, an Office referral physician, on the issue of whether she had any residual condition due to her September 2, 2004 work injury. The Office referred appellant to Dr. Cohen for an impartial medical examination to resolve the conflict in opinion.

Where there exists a conflict in medical opinion 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, is entitled to special weight.⁹ The Board finds that the opinion of Dr. Cohen, a Board-certified neurologist selected to resolve the conflict in opinion, is based on a proper factual and medical history, is well rationalized and supports that appellant's disability due to her employment injury ceased by September 16, 2005. In a report dated September 16, 2005, Dr. Cohen accurately summarized the relevant medical evidence, provided detailed findings on physical examination and reached conclusions about appellant's condition which comported with her findings.¹⁰ She diagnosed

⁵ 5 U.S.C. § 8123(a).

⁶ 20 C.F.R. § 10.321.

⁷ *David W. Pickett*, 54 ECAB 272 (2002); *Barry Neutuch*, 54 ECAB 313 (2003).

⁸ The Office noted that it would separately adjudicate the issue of appellant's entitlement to compensation for periods prior to January 21, 2005.

⁹ *Willie M. Miller*, 53 ECAB 697 (2002).

¹⁰ *See Manuel Gill*, 52 ECAB 282 (2001).

status post contusion of the right arm and shoulder causally related to the September 2, 2004 employment injury. Dr. Cohen found that appellant's current condition was unrelated to the employment injury. She provided rationale for her opinion by explaining that the nature of the trauma and the findings on diagnostic studies did not support an ongoing condition due to her work injury. Dr. Cohen noted that an MRI scan of the cervical spine revealed degenerative changes but found that it was "hard to invoke how being hit in the shoulder with a mailbox would lead to a cervical spine injury." She also indicated that a right shoulder MRI scan and bone scan showed degenerative changes. Dr. Cohen interpreted electrodiagnostic studies as either not remarkable or showing acute nerve root irritation on both sides unrelated to the September 2, 2004 employment injury. She concluded that appellant had "no objective findings substantiating any residuals from the work injury of September 2, 2004." In a work restriction evaluation dated December 13, 2005, Dr. Cohen opined that appellant could perform her regular employment without restrictions. She also clarified that her opinion was unchanged when the Office corrected its statement of accepted facts to reflect that the accepted conditions were right shoulder and right elbow contusions. As Dr. Cohen's report is detailed, well rationalized and based on a proper factual background, her opinion is entitled to special weight accord an impartial medical specialist and is sufficient to show that appellant had no employment-related disability after September 16, 2005, the date of her report finding no objective evidence of the accepted conditions.¹¹

The Office further found that appellant had no disability due to her accepted condition of an adjustment disorder with mixed anxiety and depression. In a report dated January 27, 2005, Dr. Gendron diagnosed a pain disorder and adjustment disorder with mixed emotional features. She did not address disability. The Office referred appellant to Dr. Solguma for an opinion on whether she sustained a psychiatric condition due to her September 2, 2004 employment injury and, if so, the extent of any disability. The Board finds that Dr. Solguma's opinion has reliability, probative value and convincing quality with respect to the conclusions reached regarding whether appellant had any psychiatric disability. In a report dated September 6, 2005, Dr. Solguma thoroughly reviewed the relevant medical evidence and provided findings on physical examination. She diagnosed an adjustment disorder with mixed anxiety and a depressed mood which she attributed to appellant's accepted employment injury. Dr. Solguma opined that appellant could perform her regular employment from a psychiatric standpoint, providing as a rationale her lack of severe symptoms and her improvement with medication and counseling. The Board finds that Dr. Solguma's opinion represents the weight of the evidence and establishes that appellant had no impairment from her accepted condition of adjustment disorder with anxiety and depression after September 16, 2005.

LEGAL PRECEDENT -- ISSUE 2

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹² To terminate authorization for medical treatment, the

¹¹ See *Barbara J. Warren*, 51 ECAB 413 (2000).

¹² *Pamela K. Guesford*, 53 ECAB 727 (2002).

Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.¹³

ANALYSIS -- ISSUE 2

The Office met its burden of proof to terminate authorization for medical benefits for the accepted conditions of a contusion of the right shoulder and right elbow through the opinion of Dr. Cohen, the impartial medical examiner, who found that appellant had no residuals of her accepted employment injury and that her current complaints were not work related. Dr. Cohen provided rationale for her opinion by explaining that the findings on diagnostic studies did not support ongoing problems from her employment injury. As the impartial medical specialist, her opinion is entitled to special weight and establishes that appellant requires no further treatment for her accepted conditions of right elbow and shoulder contusions.

The Board finds, however, that the Office improperly terminated authorization for the accepted condition of an adjustment disorder with mixed anxiety and depressed mood. In a report dated September 6, 2005, Dr. Solguma, the Office referral physician, diagnosed an adjustment disorder with anxiety and a depressed mood. She found that appellant could perform her usual employment but also recommended continued medical treatment for her psychiatric condition, including medication and psychotherapy. In order 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.¹⁴ Dr. Solguma's opinion is insufficient to show that appellant no longer has residuals of her adjustment disorder but instead suggests that she requires further medical treatment. The Office thus improperly terminated authorization for medical treatment for the accepted condition of an adjustment disorder.

LEGAL PRECEDENT -- ISSUE 3

As the Office met its burden of proof to terminate appellant's compensation benefits as to her accepted physical conditions, the burden shifted to her to establish that she had continuing disability after that date related to her accepted injury.¹⁵ To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.¹⁶ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁷ Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *See Manual Gill, supra* note 10.

¹⁶ *Id.*

¹⁷ *Jacqueline M. Nixon-Steward, 52 ECAB 140 (2000).*

diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationalize explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁸ Neither the fact that a 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.¹⁹

ANALYSIS -- ISSUE 3

Appellant filed claims for compensation on account of disability from January 7 to February 3, 2006. Given the Board's finding that the Office properly relied upon the opinions of Dr. Cohen and Dr. Solguma in finding that she was not entitled to compensation after September 16, 2005, the burden of proof shifts to appellant to establish that she remains entitled to compensation after that date.²⁰

In a report dated January 23, 2006, Dr. Chun diagnosed right shoulder pain, complex regional pain syndrome, mild tendinopathy of the biceps tendon with degenerative changes, cervical strain, bilateral CTS, bilateral cervical radiculopathy at C5-6, fibromyalgia and possible right thoracic outlet syndrome. He noted that she was status post a work injury on September 2, 2004 with symptoms of right shoulder, neck and upper extremity pain and numbness. Dr. Chun opined that appellant could work with restrictions. As he was on one side of the conflict resolved by Dr. Cohen, his additional report is insufficient to overcome the special weight accorded Dr. Cohen's opinion or to create a new conflict.²¹ Further, Dr. Chun did not specifically address the cause of appellant's partial disability and thus his opinion is of diminished probative value.²² Appellant, consequently, has not met her burden of proof to establish any continuing employment-related disability.

CONCLUSION

The Board finds that the Office properly determined that appellant was not entitled to compensation subsequent to September 16, 2005 on the grounds that she had no further employment-related disability. The Board further finds that the Office properly terminated authorization for medical benefits for the accepted conditions of a contusion of the right shoulder and elbow effective September 16, 2005 but improperly terminated authorization for medical benefits for the accepted condition of an adjustment disorder with mixed anxiety and a depressed mood. The Board further finds that appellant has not established that she had continuing employment-related disability subsequent to September 16, 2005.

¹⁸ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁹ *Ernest St. Pierre*, 51 ECAB 623 (2000).

²⁰ *See Manual Gill*, *supra* note 10.

²¹ *Alice J. Tysinger*, 51 ECAB 638 (2000).

²² *Jaja K. Asaramo*, 55 ECAB 200 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 22 and 7, 2006 are affirmed. The decision dated January 20, 2006 is affirmed in part and reversed in part.

Issued: April 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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