



authorized carpal tunnel release surgery. On October 23, 2002 appellant injured his left shoulder while in the performance of duty. He filed a claim for benefits on November 2, 2002, which the Office accepted for left shoulder strain and left biceps tendon tear.<sup>1</sup> Appellant has a preexisting condition of T11-12 paraplegia, stemming from a March 18, 1973 nonwork-related automobile accident. The Office commenced payment for intermittent temporary total disability compensation and placed him on the periodic rolls.

In a report dated March 20, 2003, Dr. Roger D. Woodruff, Board-certified in family practice and the attending physician, stated:

“I am writing in reference to [appellant’s] deteriorating condition. As you know, he has been off work due to left shoulder and bilateral carpal tunnel injuries from the workplace. Physical therapy was considered essential in his recovery and was part of the off work protocol. However, he was forced to stop physical therapy a couple of weeks ago because his problems were actually worsening due to the transport issues, including loading and unloading and propelling his manual wheelchair.

“As you are aware, [appellant] has also experienced right shoulder and neck problems which did not preexist his current work[-]related injuries and on a more probable than not basis, have been created and exacerbated due to the carpal tunnel syndrome and left shoulder injuries which added undue stress to the right shoulder as well as related neck issues. He did not have significant problems with these areas prior to the work injuries and was functioning very well, as he had been since the time of his original auto accident which related his paraplegia.

“At this point, I believe it is essential that [appellant] be provided with additional equipment which is necessary for him to complete his physical therapy treatments and resume productive work. Modifications I would strongly endorse include an electric wheelchair, which I think is essential to his continued independence, as well as a van with appropriate modifications to allow his transport. He also does need some in home adjustments such as an elevated toilet seat with arms and modified bath stool appropriate for self-transfer.”<sup>2</sup>

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<sup>1</sup> The claim form and acceptance letter are not contained in the instant record. The facts pertaining to these missing documents are not in dispute.

<sup>2</sup> Appellant submitted a May 13, 2003 “letter of medical necessity” from a physical therapist in support of his request for an electric wheelchair and wheelchair-accessible van. The letter stated that “with the above recommended equipment, [appellant] would significantly reduce mechanical stress on his left shoulder when propelling his wheelchair and performing work activities. In addition, the improved postural support and positioning will allow him to use his upper extremities with less stress and strain. Without the recommended power wheelchair system, [appellant] will be unable to return to work and will also most likely require increased help with his personal care.”

In a report dated May 19, 2003, Dr. Michael H. Kody, Board-certified in orthopedic surgery, stated that x-rays showed degenerative changes in appellant's left shoulder attributable to his employment and his work injury. He recommended that appellant be authorized to acquire an electric wheelchair as well as other appropriate equipment to assist in his recovery.

In order to ascertain appellant's current condition and determine the necessity for the electric wheelchair and wheelchair-accessible van requested by Dr. Woodruff, the Office referred appellant to Dr. Carl F. Brunjes, Board-certified in orthopedic surgery. In a report dated January 27, 2004, Dr. Brunjes stated that the accepted left shoulder condition had not resolved. He advised that the degenerative changes in the left shoulder and the partial rotator cuff tears have led to a significant restriction of range of motion in the left shoulder. Dr. Brunjes stated that the prognosis was for continuing limitation of motion, to at least the degree seen at the present time on the present examination. Appellant had reached a point of maximum medical improvement and no additional curative treatment was considered or indicated. With regard to the need for an electric wheelchair, wheelchair accessible van and driving system, Dr. Brunjes attributed this to appellant's preexisting paraplegia. He stated that if appellant had not been a paraplegic and using a wheelchair on a chronic basis, his left shoulder injury would not have precluded him from working following the treatment.

In a March 17, 2004 supplemental report, Dr. Brunjes stated that, with the exception of not reaching above shoulder level with the left arm, as a separate entity, the left shoulder injury does not require the restrictions and acquisition of the electric wheelchair or wheelchair accessible van or driving system. He stated that the restriction for reaching above shoulder level was permanent.

In a report dated March 12, 2004, Dr. Woodruff stated that he disagreed with Dr. Brunjes that the need for an electric wheelchair was due to the paraplegia and reiterated that it was due to the work-related aggravation of the shoulder. He asserted that his opinion was supported by the fact that appellant functioned very well from the time of the accident and paraplegia in 1973 using the standard wheelchair, until his left shoulder aggravation, combined with his bilateral carpal tunnel syndrome and release, resulted in his inability to perform his work duties. Dr. Woodruff asserted that, because appellant had not acquired the requested electric wheelchair and wheelchair accessible van, he was experiencing increasing symptoms and degeneration in his right shoulder. He indicated that this deterioration was occurring due to appellant's need to manually maneuver his current wheelchair. Dr. Woodruff reiterated that appellant's need for an electric wheelchair was due to the aggravation of the left shoulder rather than the paraplegia because appellant functioned well for so many years prior to his bilateral carpal tunnel syndrome and deterioration in his left and right shoulders.

The Office found that there was a conflict in the medical evidence between Drs. Brunjes and Woodruff regarding whether appellant still experienced residuals from the October 23, 2002 employment injury and whether his work-related left shoulder conditions necessitated an electric wheelchair and wheelchair accessible van. The Office referred appellant to Dr. Alfred I. Blue, a Board-certified orthopedic surgery, for an impartial examination to resolve the conflict.

In a report dated June 30, 2004, Dr. Blue stated findings on examination and reviewed appellant's history of injury and his medical records. He diagnosed left shoulder acromioclavicular (AC) joint arthrosis with impingement on the shoulder and loss of motion, degenerative changes of tendinitis of the tendons about the shoulder, with degenerative changes and a rupture of the left biceps tendon. Dr. Blue opined that these conditions were more likely than not due to his being a paraplegic; they resulted from appellant using his hands and arms in weight bearing and wheelchair movement, as opposed to being caused by his work duties. He advised that appellant's tendinitis was not due to reaching up and grabbing an object or his work duties, but was more likely due to his previous paraplegia and his having to over-use his hands and arms.

Dr. Blue advised that the aggravation to the left AC joint was a preexisting condition aggravated by the October 2002 work injury and is permanent. He further stated that the accepted condition had not resolved and noted that there were objective findings indicating degenerative changes in the left AC joint.

Dr. Blue stated:

"My prognosis is as follows: In my opinion, if we resect the distal end of the clavicle; *i.e.*, a Mumford procedure, his disability will be markedly decreased. His tendin[itis], although present, should not prevent him from returning to work; he should be able to return to not requiring an electric wheelchair or a driving system. This certainly may be present in the future due to his previous condition; *i.e.*, paraplegia, but not due to his work. The need for treatment is not due to unrelated conditions, whether preexisting or subsequent to the occupational injury."

With regard to appellant's request for an electric wheelchair and wheelchair accessible van, Dr. Blue stated:

"I would not recommend an electric wheelchair, a wheelchair accessible van or driving system back and forth to work. I think his shoulder is a correctable shoulder and note that his right shoulder has essentially the same problem as the left shoulder except the extensive degenerative changes in the AC joint on the left with impingement on the myotendinous junction of the shoulder."

By letter dated August 26, 2004, the Office asked Dr. Blue to clarify his opinion and answer several questions. In an August 27, 2004 report, Dr. Blue responded to the Office's queries. In response to the Office's question regarding whether there were any diagnosed conditions (evidenced by objective findings) related to the October 23, 2002 work injury as described in the statement of accepted facts or whether the October 23, 2002 incident merely produced symptoms related to the underlying condition, Dr. Blue stated:

"In my opinion, when [appellant] reached up with his left arm to retrieve a ream of paper from an overhead cabinet, it merely produced symptoms of pain revelatory of the underlying conditions. Reaching for the ream of paper did not create the problems that I have diagnosed."

When asked by the Office to explain his statements that the only work-related condition appellant currently experienced was pain in the left shoulder and that the accepted condition had not resolved, Dr. Blue stated:

“In my opinion, again, the absolutely only work-related condition was pain which was an aggravation of his AC joint arthrosis. In my opinion, again, the arthrosis is, on a more likely than not basis, related to his paraplegia which requires heavy use of the upper extremities.

“I explain again, there are no diagnosed conditions, in my opinion, that are related to October 23, 2002 incident, which was reaching up to get a ream of paper. That did not create any of the problems which were observed on the examination date of June 30, 2004.”

Finally, the Office noted that Dr. Blue had indicated that appellant required further treatment, consisting of a Mumford procedure; the Office asked Dr. Blue whether the need for treatment and/or surgery was a result of the October 23, 2002 incident. Dr. Blue stated that the need for treatment was related to previously existing degenerative change in the left AC joint, which was present at the time of the October 23, 2002 incident. He advised that the surgery he recommended was not related to that incident. Dr. Blue further stated that there were no work restrictions resulting from the October 23, 2002 incident; appellant’s work restrictions were preexisting to that incident.

Dr. Blue concluded:

“[Appellant] is paralyzed and restrictions are related to his paralysis. Restrictions then would be limited to areas of independent mobility, paraplegia. There are no restrictions that I would make subsequent to his work injury. His current restrictions are limited use of the hands due to this problem. If the hands are kept at a desk level without having to raise them above desk level, activities such as writing or use of a keyboard would not be restricted.”

By decision dated September 24, 2004, the Office found that appellant had no continuing disability or impairment causally related to the October 23, 2002 employment injury, finding that Dr. Blue’s opinion represented the weight of the medical evidence. The Office also denied authorization for an electric wheelchair, wheelchair accessible van and driving system. The Office found that the weight of the medical evidence did not establish the need for this medical equipment.

By letter dated October 15, 2004, appellant’s attorney requested an oral hearing, which was held on October 27, 2005. At the hearing, appellant’s attorney submitted an October 27, 2005 brief, in which he asserted that Dr. Blue’s referee opinion was not well rationalized. He stated that there were significant inconsistencies between Dr. Blue’s first report and his supplemental report; specifically, he indicated that Dr. Blue, in his first report, stated that appellant had a permanent aggravation of the left AC joint due to the October 23, 2002 work injury. Counsel also noted that Dr. Blue stated that the accepted condition had not resolved. He further argued that Dr. Blue had disregarded the statement of facts by asserting that there were

no diagnosed conditions related to the October 23, 2002 incident. In addition, he contended, Dr. Blue did not explain why he believed the left supraspinatous tear, accepted by the Office, did not result from the October 23, 2002 work incident. At the hearing, appellant's attorney reiterated the arguments he raised in his October 27, 2005 brief. He noted that appellant had returned to work, but indicated that he was not seeking retroactive compensation for appellant; rather, he sought authorization for an electric wheelchair and a wheelchair accessible van.

By decision dated January 13, 2006, an Office hearing representative affirmed the September 24, 2004 termination decision.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>3</sup> After it has determined that an employee has disability causally related to his or 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.<sup>4</sup>

Section 8123(a) of the Federal Employees' Compensation 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.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

In this case, the Office determined that a conflict existed in the medical evidence between Dr. Woodruff, appellant's treating physician, and Dr. Brunjes, the Office's second opinion physician, as to whether appellant had continuing residuals of the accepted injuries. The Office thereafter based its decision to terminate appellant's compensation on the reports of Dr. Blue, the independent medical examiner.

The Board finds that the Office erred in finding that Dr. Blue's referee report established that the residuals of appellant's accepted left shoulder strain and left biceps tendon tear had ceased and that his report was entitled to the weight of the evidence. To the contrary, both Dr. Blue and Dr. Brunjes, the second opinion examiner, opined that the accepted condition had not resolved, therefore, at the time of the referral to Dr. Blue no conflict existed in the medical opinion evidence regarding the issue of appellant's continuing residuals.

Dr. Blue further stated that the aggravation to the left joint in the shoulder was a preexisting condition aggravated by the October 2002 work injury and is permanent. In its September 24, 2004 decision, however, the Office found that Dr. Blue's opinion constituted sufficient medical evidence to establish that appellant's accepted conditions had resolved.

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<sup>3</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>4</sup> *Id.*

<sup>5</sup> 5 U.S.C. § 8123(a).

Further, the Office erred by asking Dr. Blue to provide his own explanation regarding whether appellant's October 23, 2002 work injury accident, as described in the statement of accepted facts, could have caused appellant's diagnosed conditions or whether the October 23, 2002 incident merely produced symptoms related to the underlying condition.<sup>6</sup> Dr. Blue disregarded the statement of accepted facts by opining that "when [appellant] reached up with his left arm to retrieve a ream of paper from an overhead cabinet, it merely produced symptoms of pain revelatory of the underlying conditions" and that "[r]eaching for the ream of paper did not create the problems that I have diagnosed." He further contradicted the statement of facts by asserting: (a) the only work-related condition appellant had was pain caused by an aggravation of his AC joint arthrosis, which was most likely related to his paraplegia requiring heavy use of the upper extremities; and (b) that there are no diagnosed conditions related to the October 23, 2002 incident, in which appellant reached up to retrieve a ream of paper. As Dr. Blue was not acting as an impartial medical specialist regarding the issue of continuing residuals and he explicitly stated that appellant's accepted condition had not resolved and he contravened the statement of accepted facts in his reports, the Office erred by relying on his referee opinion to terminate appellant's compensation.

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

Section 8103 of the Act<sup>7</sup> provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.<sup>8</sup> In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office, therefore, has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>9</sup>

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

In this case, the Office accepted that appellant had sustained the conditions of bilateral carpal tunnel syndrome, left shoulder strain and left biceps tendon tear. Dr. Woodruff, the attending physician, advised that appellant's conditions were worsening due to the difficulties

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<sup>6</sup> The actual statement of accepted facts is not contained in the instant record. The hearing representative indicated in his July 13, 2006 decision, however, that the Office had accepted the conditions of left shoulder strain and left biceps tear.

<sup>7</sup> 5 U.S.C. § 8101 *et seq.*

<sup>8</sup> 5 U.S.C. § 8103.

<sup>9</sup> *Dale E. Jones*, 48 ECAB 648 (1997); *Daniel J. Perea*, 42 ECAB 214 (1990).

appellant experienced while loading and unloading and propelling his manual wheelchair.<sup>10</sup> Dr. Woodruff felt that appellant required an electric wheelchair and wheelchair accessible van. He believed this additional equipment was necessitated by employment-related conditions because appellant did not have significant problems with these areas prior to the work injuries and had been functioning competently since the time of his automobile accident which caused his paraplegic condition.<sup>11</sup> Dr. Brunjes opined that appellant's need for an electric wheelchair, wheelchair accessible van and driving system was caused by his preexisting paraplegia and not his work-related left shoulder injury. As noted above, the Board found that Dr. Brunjes' January and March 2004 reports created a conflict in the medical evidence regarding whether appellant's need for an electric wheelchair, wheelchair accessible van and driving system was work related and the Office referred the case file to Dr. Blue to resolve the conflict in medical evidence.

In his June 30, 2004 report, Dr. Blue stated that he would not recommend an electric wheelchair, a wheelchair accessible van or driving system. He stated in his August 27, 2004 report that the only work-related condition was left shoulder pain and that all of appellant's work restrictions were related to his nonwork-related paralysis and paraplegia, not his accepted conditions. Dr. Blue did not specifically address whether appellant's accepted bilateral carpal tunnel condition necessitated the additional medical equipment. He did state, however, that appellant's current restrictions consisted of limited use of the hands. Dr. Blue opined that if appellant kept his hands at desk level without having to raise them above desk level, activities such as writing or use of a keyboard would not be restricted.

As noted above, the only restriction on the Office's authority to authorize medical treatment is one of reasonableness. Dr. Blue, the impartial medical examiner, found that the medical evidence was not sufficient to establish that appellant required an electric wheelchair or wheelchair accessible van. Therefore, given the fact that the medical evidence of record indicates that appellant's need for an electric wheelchair and wheelchair accessible van is not work related, the Office did not unreasonably deny appellant's authorization to obtain this additional equipment.<sup>12</sup> The Office did not abuse its discretion to deny appellant authorization for an electric wheelchair and wheelchair accessible van.

### **CONCLUSION**

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits for the accepted left shoulder condition. The Board finds that the Office did not abuse its discretion by denying appellant's request for authorization for an electric wheelchair and wheelchair accessible van.

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<sup>10</sup> Dr. Woodruff stated that appellant also experienced right shoulder and neck problems which did not preexist his current work-related injuries and that these conditions were caused by his accepted carpal tunnel and left shoulder injuries. The Board notes, however, that the Office has not accepted these conditions; nor has appellant ever filed a claim based on these conditions.

<sup>11</sup> Dr. Woodruff also stated that appellant required some in-home adjustments such as an elevated toilet seat with arms and modified bath stool appropriate for self-transfer.

<sup>12</sup> The Board additionally notes that appellant has returned to full-time work even though he has yet to obtain these items.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 13, 2006 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part, in accordance with this decision.

Issued: February 8, 2007  
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