



## **FACTUAL HISTORY**

This case was previously before the Board. Appellant, a 56-year-old retired flat sorter machine operator, has an accepted occupational disease claim for cervical strain and right trapezius strain, which arose on or about November 22, 2000.<sup>2</sup> Effective September 8, 2003, the Office terminated wage-loss compensation and medical benefits based on the opinion of Dr. E. Gregory Fisher, a Board-certified orthopedic surgeon and impartial medical examiner.<sup>3</sup> By decision dated August 10, 2004, the Branch of Hearings and Review affirmed the termination of benefits. In an April 12, 2006 decision, the Board affirmed the hearing representative's decision.<sup>4</sup>

Appellant, with the assistance of counsel, requested reconsideration on May 4, 2006. Under file number 09-433949, the Office had authorized a second right shoulder surgical procedure related to appellant's June 1, 1997 employment injury. On reconsideration, counsel submitted the October 12, 2005 operative report for the previously authorized procedure, along with a March 1, 2006 report from Dr. R. Scott Jolson, a Board-certified orthopedic surgeon.

On October 12, 2005 Dr. Jolson surgically repaired a right superior labral tear. He also excised a posterior lipoma from appellant's right shoulder and performed an acromioclavicular (AC) joint stabilization, with repair of the coracoacromial ligament. In his March 1, 2006 report, Dr. Jolson indicated that appellant's October 12, 2005 surgery was causally related to his initial work injury. Although he did not specify the date of injury, he noted that the "initial work-related injury" was treated with an open Mumford/AC resection procedure. Dr. Jolson further explained that appellant's prior surgery was complicated in that his AC joint was made unstable postsurgery, and this bought on pain progressively over several years. He also indicated that the superior labral tear he repaired on October 12, 2005 was likely present at the time of the initial surgical procedure, but was either undetected or not repaired for some reason. Dr. Jolson also stated that the lipoma he excised was not likely work related.

The Office also received a May 31, 2006 report from Dr. Janalee K. Rissover, a Board-certified physiatrist, who noted that appellant continued to have some pain in his shoulders, but he reportedly felt he was getting better. Dr. Rissover also noted that appellant believed the lipoma in his shoulder may be causing some of the pain.

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<sup>2</sup> The Office combined the instant file number 09-2005724 with an earlier file number 09-433949 that had been accepted for aggravation of right shoulder osteoarthritis arising on June 1, 1997. Additionally, under file number 09-433949, the Office previously authorized a June 16, 1998 right shoulder arthroscopic decompression and distal clavicle resection. The case records relevant to appellant's June 1, 1997 and November 22, 2000 employment injuries were combined under file number 09-433949. Also combined under file number 09-433949 is another occupational disease claim for an October 25, 1991 right wrist dorsal ganglion cyst file number 09-0386821.

<sup>3</sup> In a report dated August 28, 2002, Dr. Fisher found that appellant's right shoulder and neck strain had resolved. Dr. Fisher also advised that the claim should not be expanded to include appellant's age-related cervical degenerative disc disease. In a supplemental report dated June 2, 2003, Dr. Fisher further indicated that there were no remaining residuals from the cervical strain or right shoulder strain. He explained that the November 22, 2000 soft tissue injuries would have resolved over a period of four weeks to three months.

<sup>4</sup> Docket No. 05-303 (issued April 12, 2006).

By letter dated June 26, 2006, the Office advised counsel that appellant's June 1, 1997 injury for aggravation of right shoulder osteoarthritis remained open for conservative medical treatment.

In a decision dated July 10, 2006, the Office denied modification of the prior decision terminating compensation and medical benefits related to appellant's November 22, 2000 injury under file number 09-2005724.

### **LEGAL PRECEDENT**

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>5</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>6</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>7</sup> 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.<sup>8</sup>

### **ANALYSIS**

When this case was previously on appeal, the Board affirmed the Office's decision to terminate benefits based upon the opinion of Dr. Fisher, a Board-certified orthopedic surgeon and impartial medical examiner. The Board's April 12, 2006 decision is incorporated herein. While appellant sustained a number of employment-related injuries, the only injury currently at issue is the cervical and right trapezius strain that arose on or about November 22, 2000. This was the injury that Dr. Fisher determined had resolved and for which the Office terminated medical benefits and wage-loss compensation effective September 8, 2003. The medical evidence counsel submitted in conjunction with the May 4, 2006 request for reconsideration is not specific to appellant's November 22, 2000 employment injury. Neither Dr. Jolson nor Dr. Rissover specifically related appellant's ongoing right shoulder condition to the November 22, 2000 soft tissue injury he sustained. Instead, Dr. Jolson related appellant's October 12, 2005 surgery to a prior work-related shoulder injury that required surgery. The only prior surgery of record is the June 16, 1998 right distal clavicle "Mumford" procedure the Office authorized in relation to appellant's June 1, 1997 injury, which was accepted for aggravation of right shoulder osteoarthritis. In fact, the October 12, 2005 surgery was authorized for appellant's June 1, 1997 injury under file number 09-0433949. As the Office advised on June 26, 2006, appellant's June 1, 1997 right shoulder injury remains open for medical treatment. There is no recent evidence indicating that appellant continues to experience residuals of the November 22, 2000 employment injury.

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<sup>5</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>6</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>7</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>8</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

The evidence submitted on reconsideration does not undermine the Office's prior decision to terminate compensation and medical benefits with respect to appellant's November 22, 2000 employment injury. The weight of the medical evidence remains with the impartial medical examiner's August 28, 2002 and June 2, 2003 reports.

**CONCLUSION**

The Office properly terminated appellant's wage-loss compensation and medical benefits effective September 8, 2003.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 10, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 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