

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

---

A.C., Appellant )

and )

**U.S. POSTAL SERVICE, ANAHEIM )  
PROCESSING & DISTRIBUTION FACILITY, )  
Anaheim, CA, Employer )**

---

**Docket No. 07-578  
Issued: June 11, 2007**

*Appearances:*  
*Appellant, 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 December 26, 2006 appellant filed a timely appeal from a November 15, 2006 merit decision of the Office of Workers' Compensation Programs which denied her request for reconsideration. She also appealed an October 26, 2006 decision of the Office which terminated compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUES**

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective October 26, 2006; and (2) whether appellant met her burden of proof to establish that she had any disability after October 26, 2006 causally related to her accepted employment injuries.

## **FACTUAL HISTORY**

On January 21, 2004 appellant, then a 46-year-old distribution clerk, filed an occupational disease claim stating that she developed chronic cervical strain with right-sided radicular symptoms and right shoulder strain in the performance of duty.<sup>1</sup> She did not stop work but began working modified duty. Appellant stated that she first attributed her condition to her employment on May 22, 2003. After appropriate development, the Office accepted her claim for cervical radiculopathy and right shoulder strain.

Appellant submitted treatment notes and progress reports from Dr. Anthony Yang, a Board-certified orthopedic surgeon. In an April 16, 2004 report, Dr. Yang advised that appellant had complained of right shoulder and neck pain since May 22, 2003. He diagnosed cervical strain and right shoulder impingement and noted that, although appellant's symptoms had improved with physical therapy and exercise, she still experienced neck and right shoulder pain. Dr. Yang advised that appellant could work with restrictions on overhead activities. On May 28, 2004 he recommended that appellant "self pace" and refrain from reaching above shoulder level or lifting greater than 15 pounds. Dr. Yang extended appellant's work restrictions in follow-up status. On January 6, 2006 he noted that appellant would be off work from January 3 to 8, 2006 and would return to restricted-duty work on January 9, 2006. Appellant also submitted reports from Dr. Matthew Lin, a Board-certified orthopedic surgeon, who treated appellant for lumbar disc disease.<sup>2</sup>

In a January 23, 2006 report, Dr. E.W. Wassef, a Board-certified orthopedic surgeon and a fitness-for-duty physician, reviewed the record and noted findings on examination regarding appellant's shoulders and spine. He measured lumbar and cervical spine and right upper extremity range of motion and diagnosed lumbosacral spine injury, cervical strain and right shoulder sprain/strain. Dr. Wassef explained that, based on his evaluation, there was no basis for orthopedic restrictions or limitations. He advised that appellant had full range of motion of the cervical spine, right shoulder and lumbar spine with no significant pain and no sign of impingement of the right shoulder. Dr. Wassef concluded that appellant's continuing symptoms were the result of the normal aging process and that she could perform her regular duties without limitation.

In a May 8, 2006 report, Dr. Yang advised that appellant had "an industrial injury" and that he had treated her for right shoulder impingement and cervical strain. He stated that appellant had been doing "fairly well" working modified duty "at her own pace" but that she still had neck and shoulder pain. On examination, appellant had a "comfortable" range of motion of the neck with right side paraspinal muscle tenderness while the right shoulder showed "good" range of motion with minimal signs of impingement. Dr. Yang directed appellant to continue working modified duty. He continued submitting reports noting appellant's status and work restrictions.

---

<sup>1</sup> The record reflects that appellant also sustained a work-related lumbar strain to her low back on May 20, 1998 in claim file number 131204609. The low back claim is not presently before the Board.

<sup>2</sup> As noted above, appellant's low back condition is the subject of a separate claim, file number 131204609.

On August 14, 2006 the Office referred appellant, along with a statement of accepted facts, to Dr. William C. Boeck, a Board-certified orthopedic surgeon, for a second opinion examination. In an August 30, 2006 report, Dr. Boeck noted examining appellant on that date. He found that appellant's right shoulder had complete and normal range of motion while he noted that there was no complaint of discomfort to palpation of the head and neck for which normal muscle strength and intact sensation were present. Dr. Boeck noted that appellant experienced some shoulder discomfort but not enough to interfere with her daily activities. He explained that appellant's history was significant for low back injury on May 20, 1998 which was "declared permanent and stationary." Upon examining appellant and reviewing the medical record, Dr. Boeck noted diagnoses of cervical radiculopathy, right shoulder strain and history of lumbar strain. He found that employment-related residuals of appellant's right shoulder and cervical conditions had resolved, explaining:

"The condition of cervical radiculopathy, from the standpoint of this examination, appears to have resolved prior to when this examination was carried out, but I am unable to determine from the medical records exactly when the resolution of this problem occurred. The right shoulder strain at the present time exhibits no objective findings and, therefore, I feel this condition has resolved entirely without residuals."

Dr. Boeck measured slightly below normal spinal range of motion and completely normal right upper extremity range of motion. He stated that appellant had reached maximum medical improvement (MMI) and opined: "In my estimation, [appellant] is capable of returning to her position which she held at the date of injury without restrictions." Dr. Boeck advised that he found "no objective findings of any consequence in regard to the cervical spine ... the shoulder or elsewhere." In a work capacity evaluation form prepared the same day, he advised that appellant could return to work without restrictions.

In a September 8, 2006 report, Dr. Yang noted that appellant presented for follow-up treatment for cervical strain and right shoulder impingement. Appellant reported that some symptoms had improved although she still had discomfort after activity. Examination revealed some mild tenderness on the right side of the paraspinous muscles and mild impingement symptoms of the right shoulder. Dr. Yang advised that appellant could continue working modified duty.

The Office issued a notice of proposed termination on September 21, 2006 finding that Dr. Boeck's opinion established that any residuals of appellant's employment-related injury had resolved.

By letter dated October 9, 2006, appellant disagreed with the proposed termination of her benefits. She expressed concern that she would be penalized if she was not allowed to work with restrictions but was still unable to meet the employing establishment's production requirements and asserted: "I need restrictions when I perform the job to avoid further injury claim." Appellant also submitted information concerning the nature of her job with the employing establishment.

On October 26, 2006 the Office finalized termination of appellant's compensation benefits effective the same day.

Appellant requested reconsideration on November 7, 2006. In support of her request, she submitted an October 9, 2006 report from Dr. Yang, who explained that he was treating appellant for cervical strain with right-sided radicular symptoms and right shoulder impingement and that appellant continued to experience neck and shoulder discomfort after performing work or other activity. Dr. Yang noted appellant's work restrictions, including "no overt activities allowing [her] to do zone separately and to work at her own pace" which he stated had improved appellant's comfort level. On examination, he found that appellant had "good range of motion of the cervical spine" with "near full flexion, extension, rotation and bending." Dr. Yang listed ranges of motion for appellant's right shoulder and provided estimates of permanent impairment with regard to her right shoulder and cervical spine.<sup>3</sup> He stated that appellant had reached MMI and recommended that she continue working within her limitations. Dr. Yang explained: "[Appellant] is previously shown to have a relapse of the symptoms when restrictions were lifted and has been fairly stable without a significant exacerbation of the symptoms while maintaining the above-noted modifications and restrictions."

By decision dated November 15, 2006, the Office denied modification of its October 26, 2006 decision.

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

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>4</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>5</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

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

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits.

The Office referred appellant to Dr. Boeck who, in an August 30, 2006 report, reviewed appellant's history and conducted a comprehensive examination. Dr. Boeck provided a

---

<sup>3</sup> Appellant's reconsideration request indicated that she wanted restoration of her rights to compensation, including a schedule award. However, the record otherwise contains no claim for a schedule award nor has the Office issued a decision regarding permanent impairment of a schedule member of the body. Consequently the Board has no jurisdiction with regard to any claim for a schedule award. *See* 20 C.F.R. § 501.2(c).

<sup>4</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>5</sup> *Id.*

<sup>6</sup> *See Del K. Rykert*, 40 ECAB 284, 295-296 (1988).

rationalized medical opinion<sup>7</sup> finding that appellant no longer had residuals of her accepted employment injuries. Specifically, he stated that his examination revealed no objective findings of any consequence to support continuing cervical radiculopathy or right shoulder strain. Dr. Boeck also measured completely full range of motion in appellant's shoulder and nearly full range of motion in her spine. Although he did note that appellant had some subjective complaints of pain, he found no objective findings to document any continuing condition. Dr. Boeck explained that his examination findings showed that appellant's cervical radiculopathy and right shoulder strain had resolved prior to the examination. He found that appellant had no need of any continuing medical treatment and advised that she had no physical restrictions with regard to performing her date-of-injury job.

Similarly, Dr. Wassef conducted a fitness-for-duty examination and, in a January 23, 2006 report, found that appellant's continuing symptoms were attributable to the normal aging process and that she had no restrictions for work.

The case record also contained several medical reports from Drs. Yang and Lin, concerning appellant's continuing work restrictions. Dr. Lin's reports primarily addressed appellant's lumbosacral spine and did not address whether she had a continuing right shoulder or cervical condition. Dr. Yang provided periodic reports on appellant's right shoulder and cervical symptoms with findings on examination. However, his reports did not address how or why appellant's continuing symptoms were employment related. For example, in his September 8, 2006 report, Dr. Yang noted findings and complaints of pain but he did not specifically indicate whether or how these continuing symptoms were due to the accepted employment injury.

Accordingly, the Board finds that the weight of the medical evidence rests with Dr. Boeck who provided reasoned findings in support of his opinion that appellant no longer had residuals of her accepted work-related condition. For these reasons, the Office met its burden of proof in terminating appellant's compensation and medical benefits for the accepted cervical radiculopathy and right shoulder strain.

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

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability which continued after termination of compensation benefits.<sup>8</sup>

The medical evidence required to establish 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

---

<sup>7</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>8</sup> *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

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>9</sup>

### ANALYSIS -- ISSUE 2

The Board finds that appellant did not meet her burden of proof in establishing that she had continuing employment-related disability or residuals after October 26, 2006.

Appellant requested reconsideration after the Office met its burden of proof to terminate her compensation benefits. In support of her request, she submitted an October 9, 2006 report from Dr. Yang who conducted a physical examination and concluded that appellant had reached MMI and reported his findings with regard to permanent impairment. However, Dr. Yang did not explain how appellant had any continuing employment-related condition. While Dr. Yang, in support of continued work restrictions, noted that appellant previously had an exacerbation of symptoms with certain work activities, he did not provide sufficient explanation or rationale to establish that any continuing condition or disability was caused by her accepted injuries.<sup>10</sup> To the extent that he opined that appellant would become injured if she returned to regular duty, the Board has held that fear of future injury is not compensable.<sup>11</sup> Moreover, Dr. Yang did not address Dr. Boeck's opinion that objective findings did not support appellant's subjective complaints of pain. He found that appellant had "good range of motion" of the cervical spine, with "near full flexion, extension, rotation and bending." Dr. Yang did not present objective findings to fully explain appellant's subjective complaints of pain or otherwise explain how continuing symptoms and diagnoses would be employment related. The Board finds that his report was insufficient to establish that appellant had any continuing residuals of her employment-related conditions after October 26, 2006.

### CONCLUSION

The Board finds that the Office properly terminated appellant's compensation and medical benefits effective October 26, 2006 and that appellant did not meet her burden of proof in establishing that she was disabled as a result of her previous employment injuries after October 26, 2006.

---

<sup>9</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> *See id.*

<sup>11</sup> *See Calvin E. King*, 51 ECAB 394 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 15 and October 26, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 11, 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