

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

E.C., Appellant)

and)

DEPARTMENT OF THE ARMY,)
FORT CAMPBELL, KY, Employer)

**Docket No. 07-1309
Issued: September 24, 2007**

Appearances:
Appellant, pro se
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 April 16, 2007 appellant filed a timely appeal from the October 6, 2006 and March 26, 2007 merit decisions of the Office of Workers' Compensation Programs, which terminated his compensation and denied modification. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the termination.

ISSUE

The issue is whether the Office properly terminated appellant's compensation.

FACTUAL HISTORY

On June 7, 2005 appellant, then a 52-year-old materials handler, sustained an injury in the performance of duty: "Lifting an iron rack weighing (120 pounds), so that it could be transported for shipment. I had to lift it up on the scale to be weighed and removed. I hauled the rack to transportation for shipment alone. I loaded it into the truck on and off the scale." Appellant complained of hurting and burning in his upper left shoulder. Dr. Donald W. Huffman, his attending family practitioner, noted a preexisting degenerative arthritis in the left

shoulder. He diagnosed left shoulder strain. The Office accepted appellant's claim for left shoulder sprain. Appellant received compensation for temporary total disability on the periodic rolls.

An October 19, 2005 magnetic resonance imaging (MRI) scan of the left shoulder revealed small joint effusion, mild supraspinatus tendinosis without evidence of a rotator cuff tear, mild degenerative changes at the acromioclavicular (AC) joint without impingement and a small degenerative cyst in the humeral head. With degenerative changes and no torn cartilage, continued conservative treatment was recommended.

The Office referred appellant, together with the case file and a statement of accepted facts, to Dr. Harold H. Alexander, an orthopedic surgeon, to determine the extent of any disability remaining from the June 7, 2005 work injury. On April 4, 2006 Dr. Alexander reviewed appellant's history and complaints. After describing his findings on physical examination, he stated that it was somewhat difficult to explain some inconsistencies. Dr. Alexander concluded:

“My opinion is that the lifting injury of June 7, 2005 was a temporary aggravation of a preexisting condition without any evidence to support a tear or impingement. I believe his symptoms should have resolved over a period of 6 [to] 12 weeks. I cannot explain the continued symptoms that this patient has, as well as the inability to move his left shoulder actively or passively. I would have expected his condition to have resolved within three months of his injury. This was a temporary aggravation. In my opinion I would have thought he could have returned to his base line duty three months after his injury of June 7, 2005. He should be able to return to unrestricted full duties as a materials handler, but would probably require a functional capacity evaluation before he could [d]o this. I am not certain whether he has any adhesive capsulitis of his left shoulder, since he says he does not move his arm and he may have some degree of decrease [range of motion] from non use. It is very difficult to evaluate him because he will not let me move his shoulder passively. I believe he has reached maximum medical improvement. At this time I would suggest he see a physical therapist for strengthening and active [range of motion] exercises of his left shoulder and also have a functional capacity evaluation.”

Appellant underwent a functional capacity evaluation on May 2, 2006. On May 3, 2006 Dr. Alexander agreed with the functional ability described and reported that he “can work as a materials handler as noted in my report.” He stated that appellant could begin with the restrictions described and then increase his activity to full duty over a three-month period.

The Office provided a copy of Dr. Alexander's report to Dr. Huffman, the attending physician, for comment. On May 17, 2006 Dr. Huffman responded:

“I reviewed the medical records, which you provided. I read the report of Dr. Alexander, who examined [appellant] on April 4, 2006. I would have to say I concur entirely with his evaluation and report. I cannot find any objective evidence as to why [appellant's] symptoms should be so persistent. I believe that

[he] should have been able to return to work within three or four months of his injury and am at a loss to explain why he is unable to do so, unless there is some secondary gain involved.

“Please feel free to contact me if further information is needed. Otherwise, I would concur with Dr. Alexander’s findings and recommend that his recommendations be followed.”

On August 31, 2006 the Office issued a notice of proposed termination of compensation. The Office found that the weight of the medical evidence, represented by Dr. Alexander’s report, demonstrated that appellant no longer had residuals of his accepted left shoulder strain. The Office allowed him, if he disagreed with the proposed termination, 30 days to submit additional evidence or argument.

In a decision dated October 6, 2006, the Office terminated appellant’s compensation effective that date.

Appellant requested reconsideration and submitted a November 13, 2006 MRI scan, which revealed the following: 1. Small focus of increased T2 signal near junction of supraspinatus and infraspinatus tendons at their insertion on the greater tuberosity, suspicious for small area of tendinopathy or partial tear. No definite full thickness rotator cuff tear identified. 2. Moderate degenerative hypertrophy at left AC joint. Mild osteophyte formation on greater tuberosity of left humerus.

In a decision dated March 26, 2007, the Office reviewed the merits of appellant’s case and denied modification of its prior decision. The Office found that the MRI scan report did not provide a physician’s opinion supporting an ongoing work-related condition.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.¹ The Act also provides for the furnishing of medical services likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation.²

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.³ After it has determined that, an employee has disability causally related to his 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.⁴

¹ 5 U.S.C. § 8102(a).

² *Id.* at § 8103.

³ *Harold S. McGough*, 36 ECAB 332 (1984).

⁴ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

ANALYSIS

The clear weight of the medical opinion evidence establishes that appellant recovered from his June 7, 2005 shoulder sprain. He stopped work and received conservative medical treatment for his left shoulder. Ten months later, Dr. Alexander, the referral orthopedic surgeon, reported that the June 7, 2005 employment injury caused an aggravation of appellant's preexisting shoulder condition, an aggravation that resolved within three months. It was his opinion that appellant was able to return to full unrestricted duties as a material handler. Dr. Huffman, appellant's family practitioner, fully endorsed Dr. Alexander's evaluation. It was his opinion that appellant should have been able to return to work within three to four months of his injury. Dr. Huffman was at a loss to explain why appellant was unable to do so, unless there was some secondary gain involved.

There is no medical opinion to the contrary. Appellant submitted a November 13, 2006 MRI scan report, but it appeared largely unchanged from the previous MRI scan obtained on October 19, 2005, which showed a mild supraspinatus tendinitis without evidence of a rotator cuff tear, mild degenerative changes at the AC joint without impingement and a small degenerative cyst in the humeral head. The Office did not accept that the degenerative changes in appellant's left shoulder had any relationship to his federal employment. The issue is not whether appellant has a preexisting degenerative condition in his left shoulder; the issue is whether he recovered from the accepted muscle strain/sprain he sustained on June 7, 2005. The Office paid appropriate compensation for wage loss and medical benefits for this left shoulder sprain. In light of the medical opinion evidence that appellant recovered from this injury within three to four months, the Board finds that the Office has met its burden of proof to justify terminating benefits effective October 6, 2006. The Board will affirm the Office decisions terminating benefits and denying modification.

CONCLUSION

The Board finds that the Office has met its burden of proof to justify terminating compensation for the accepted condition of left shoulder sprain. Both the Office referral physician and appellant's own physician agreed that he recovered from this injury within three to four months. Appellant is, therefore, not entitled to continuing compensation for that injury.

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2007 and October 6, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 24, 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