

from a letter sorting machine, a coworker started the machine which abraded and crushed her hand and wrist. The Office accepted appellant's claim for abrasion and contusion of the right wrist and hand. The Office granted her a schedule award for 11 percent permanent impairment of her right upper extremity on July 23, 2002. The Branch of Hearings and Review affirmed this decision on June 4, 2003. Dr. Curtis W. Smith, appellant's attending physician and a Board-certified orthopedic surgeon, provided findings due to appellant's right hand contusion through June 16, 2004.

Appellant sustained a second work-related injury on April 13, 2000 when she tripped over a rest bar and injured her right knee. In a statement dated April 21, 2000, she alleged additional injuries to her lower back, shoulder and neck. Appellant submitted May 2000 reports from Dr. R. Habid, an orthopedic surgeon, including findings of a limited range of motion in the spine and right shoulder and diagnoses of lumbar strain, cervical strain and right shoulder strain. On July 10, 2000 the Office accepted this claim for right knee contusion, right shoulder strain, right cervical strain, lumbar strain and right knee strain.

Dr. Smith examined appellant on August 23, 2000 and diagnosed strain, right shoulder, contusion right knee, cervical strain, lumbar strain and right knee strain. He found diminished range of motion of the shoulder especially on abduction and internal rotation as well as a positive impingement test. Dr. Smith requested a magnetic resonance imaging (MRI) scan of appellant's right shoulder and knee. He attributed appellant's knee, shoulder and back conditions to her employment injury. The Office authorized these tests on September 20, 2000. Appellant underwent MRI scans on October 13, 2000 which demonstrated a medial meniscal tear of the right knee and intrasubstance tear or tendinopathy of the right shoulder. Dr. Smith reviewed appellant's MRI scans on November 15, 2000 and agreed with the radiologist's interpretation. He recommended surgery for both appellant's right shoulder and right knee. The Office authorized right knee surgery on December 11, 2000. The Office authorized right shoulder surgery on July 14, 2003. On July 6, 2004 the Office expanded appellant's right knee claim to include medial sprain. She underwent right knee surgery on September 13, 2004. Dr. Smith diagnosed post-traumatic arthritis of the medial femoral condyle and chondromalacia of the patella. The Office also accepted that appellant's post-traumatic arthritis was employment related.

Appellant returned to light-duty work in February 2005. She increased to six hours a day with restrictions on October 12, 2005. Dr. Smith found a slightly antalgic gait and mild effusion of the right knee with medial joint line tenderness and repeated the diagnoses. He stated that appellant could work six hours a day lifting no more than five pounds.

On January 9, 2006 the Office referred appellant for a second opinion evaluation with Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, who completed a report dated February 7, 2006. He noted appellant's history of injury and reported his physical findings of unremarkable right hand and wrist with no swelling or tenderness as well as full range of motion. Dr. Kaffen found that appellant's right shoulder demonstrated full range of motion with pain, but no muscle atrophy or weakness. He reported that appellant experienced tenderness in the acromioclavicular joint and glenohumeral joint. Dr. Kaffen found that appellant's right knee demonstrated flexion contracture and mild quadriceps weakness. He examined appellant's cervical and lumbar spines and found tenderness in both areas with muscle guarding and limited

range of motion. Dr. Kaffen found that appellant's deep tendon reflexes were equal bilaterally and that she had no motor or sensory deficit. He concluded that appellant's abrasions and contusions of the right wrist and hand were resolved. Dr. Kaffen also found that appellant's right shoulder strain, cervical strain and lumbar strain had resolved. He stated that appellant no longer exhibited objective findings to support residuals of these conditions. Dr. Kaffen stated that appellant continued to experience residuals from her post-traumatic arthritis of the right knee and that she was unable to perform her date-of-injury position due to this condition.

The Office referred Dr. Kaffen's February 7, 2006 report to Dr. Smith on February 21, 2006. Dr. Smith responded on April 5, 2006. He opined that appellant continued to exhibit weakness with range of motion of the right shoulder and difficulty with overhead activities including a positive impingement. Dr. Smith continued to diagnose strain right shoulder, contusion right knee, cervical strain, lumbar strain, right knee strain and post-traumatic arthritis of the right knee. He stated, "Disagree with the recommendations that the right shoulder still at this point is no longer an active restraint. In my opinion, she still had limitations with repetitive activities especially overhead."

In a letter dated April 25, 2006, the Office found a conflict of medical opinion between Dr. Smith and Dr. Kaffen regarding appellant's right shoulder condition. On May 18, 2006 the Office referred appellant for an impartial medical examination to Dr. Timothy J. Nice, a Board-certified orthopedic surgeon. In a report dated June 16, 2006, Dr. Nice described appellant's employment injury on April 13, 2000. He noted that her right knee condition was immediately symptomatic and the only condition she mention when she sought treatment on April 13, 2000. Dr. Nice stated, "The fact that [appellant] awakened the next day with pain in her neck and her lower back and even her shoulder is compatible with a shoulder strain, neck strain and lumbosacral strain. Had this injury been more severe, I would have anticipated that the back symptoms, the neck symptoms and the right shoulder symptoms would have been present initially when the patient visited the health center." He opined that appellant sustained an passive and very mild injury to the cervical and lumbar spine on that date and that these injuries should have resolved within three months but for her degenerative changes which she may have aggravated. Dr. Nice stated, "Ongoing symptoms from her neck and her back at this point in time certainly have nothing to do with the injury that occurred in 2000."

Dr. Nice opined that, if appellant's April 13, 2000 fall resulted in a rotator cuff tear, she would have had immediate pain in her right shoulder. He concluded that, as she did not immediately report a shoulder injury following her April 13, 2000 employment incident, it was likely that she merely sustained a mild contusion or right shoulder strain. Dr. Nice stated, "Many patients, probably 50 percent of the patient age 50 and older have intrasubstance or otherwise rotator cuff tears." He opined that appellant's 2000 employment injury did not cause the intrasubstance tear in the right rotator cuff. Dr. Nice stated, "In fact, on physical examination in my office today she has pain over the acromioclavicular joint and not over the humeral tuberosity where the tear is supposed to occur." He concluded that appellant's current shoulder condition was not due to her April 13, 2000 employment injury.

In a report dated June 7, 2006, Dr. Smith provided findings regarding her right knee only. On August 2, 2006 Dr. Smith found that appellant's right shoulder had reasonably good active range of motion with pain at the extremes with weakness.

The Office proposed to terminate appellant's medical benefits for the conditions of right hand abrasion and contusion, right wrist abrasion and contusion, neck, lower back and right shoulder strain on September 12, 2006. The Office found that Dr. Nice's report represented the weight of the medical evidence.

In a note dated October 4, 2006, Dr. Smith listed his findings in regard to appellant's right knee and right shoulder.

By decision dated December 4, 2006, the Office terminated appellant's compensation and medical benefits for right hand abrasion and contusion, right wrist abrasion and contusion, neck, lower back and right shoulder conditions effective that date. The Office found that the weight of the medical opinion rested with Dr. Nice's June 16, 2006 report.

Appellant, through her attorney, requested an oral hearing on December 11, 2006. A hearing was held on April 4, 2007. Counsel contended that the current issue was whether appellant's right shoulder condition continued. Appellant submitted a May 2, 2007 note from Dr. Smith who found that appellant's right shoulder had a diminished active range of motion, especially in abduction and internal rotation as well as a positive impingement test with tenderness.

By decision dated July 8, 2007, the hearing representative affirmed the December 18, 2006 decision finding that the Office met its burden of proof to terminate appellant's compensation for the conditions of right hand abrasion and contusion, right wrist abrasion and contusion, cervical strain, lumbar strain and right shoulder strain. He noted that appellant's right knee claim remained open for benefits.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.² The Office's burden of proof in termination compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement of disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which require further medical treatment.⁴

The Federal Employees' Compensation Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the

¹ *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

² *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

³ *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001).

⁴ *Mary A. Lowe*, *supra* note 2.

employee, the Secretary shall appoint 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 of an Office medical adviser or consultant, 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 had no prior connection with the case.⁶

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained an employment-related injury on March 19, 1999 which resulted in the accepted conditions of abrasion and contusion of the right wrist and hand. Dr. Smith, a Board-certified orthopedic surgeon, treated appellant for residuals of this condition through June 16, 2004. He did not include these conditions within appellant's diagnosed conditions after that date. The second opinion physician, Dr. Kaffen, a Board-certified orthopedic surgeon, examined appellant on February 7, 2006 and found that her right hand and wrist were unremarkable with no swelling or tenderness. As Dr. Smith did not disagree with Dr. Kaffen or offer any findings in support of continuing residuals or disabilities of this condition, the Board finds that the Office met its burden of proof to terminate appellant's compensation and medical benefits in regard to accepted condition of abrasion and contusion of the right wrist and hand.

Appellant sustained a second employment-related injury on April 13, 2000 which the Office accepted resulted in the conditions of right knee contusion, right shoulder strain, right cervical strain, lumbar strain and right knee strain. The Office later accepted medial knee sprain and post-traumatic arthritis of the medial femoral condyle. Dr. Smith advised that appellant had disability and medical residuals of her right knee condition and her right shoulder strain. He opined that appellant had sustained a right rotator cuff tear as a result of her April 13, 2000 injury and recommended surgery. It initially authorized right shoulder surgery on July 14, 2003. The Office then determined that an additional medical evaluation was necessary and referred appellant to Dr. Kaffen on January 9, 2006. Dr. Kaffen agreed with Dr. Smith that appellant continued to experience employment-related right knee residuals and disability. However, he found that appellant's right shoulder strain, lumbar strain and cervical strain had resolved with no disability or medical residuals due to the lack of objective findings supporting these conditions.

Dr. Smith did not disagree with Dr. Kaffen's findings regarding appellant's cervical and lumbar strains. While he diagnosed cervical and lumbar strains in addition to strain, right shoulder, right knee strain and post-traumatic arthritis of the right knee, he did not offer any findings to support continued disability or medical residuals as a result of her cervical and lumbar strains. The Board therefore finds that the medical evidence supports that appellant's

⁵ 5 U.S.C. §§ 8101-8193, § 8123.

⁶ 20 C.F.R. § 10.321.

cervical and lumbar strains had resolved and that the Office met its burden of proof to terminate her compensation and medical benefits due to these conditions.⁷

The Board further finds that the Office properly found that there was a conflict of medical opinion evidence between Dr. Smith and Dr. Kaffen regarding appellant's disability and residuals due to her right shoulder condition. It properly referred her for an impartial medical examination with Dr. Nice, a Board-certified orthopedic surgeon.

In a June 16, 2006 report, Dr. Nice reviewed appellant's April 13, 2000 employment injury and the medical treatment immediately received. He noted on April 13, 2000 that she first sought treatment for her right knee and did not report any other conditions on that date. Based on this evidence, Dr. Nice concluded that appellant sustained a mild contusion of her right shoulder rather than a tear of the right rotator cuff. He stated that, if she had sustained a rotator cuff tear, she would have experienced immediate pain in her right shoulder. Dr. Nice further noted that rotator cuff tears were common in persons of appellant's age. He advised that her current right shoulder condition involved the acromioclavicular joint rather than the humeral tuberosity. Dr. Nice concluded that appellant's current right shoulder condition was not due to her accepted employment injury.

The Board finds that Dr. Nice's report is entitled to the weight of the medical evidence and establishes that appellant's current right shoulder condition is not due to her accepted employment injury of April 13, 2000. He noted appellant's history of injury and reviewed the medical findings in reaching his conclusion that appellant did not immediately report a severe right shoulder injury. Dr. Nice also offered medical reasoning in support of his conclusion that appellant's current right shoulder condition was not due to her employment, noting both that a large percentage of appellant's age group demonstrated rotator cuff tears and that her current shoulder symptoms did not involve the area of her shoulder identified as injured on the October 13, 2000 MRI scan. As Dr. Nice's report was based on a proper factual background and included detailed medical reasoning in support of his opinion, it is entitled to the weight of the medical evidence and the Office properly terminated appellant's compensation and medical benefits due to her right shoulder strain based on this report.

Following Dr. Nice's June 16, 2006 report, appellant submitted treatment notes from Dr. Smith dated June 7 and October 4, 2006. In these notes Dr. Smith repeated his earlier diagnoses and offered findings regarding appellant's right shoulder. He did not offer any medical reasoning in support of his conclusion that appellant's current right shoulder condition was due to her April 2000 employment injury. Further, as Dr. Smith was on one side of the conflict that Dr. Nice resolved, the additional reports from Dr. Smith are insufficient to overcome the weight accorded Dr. Nice as the impartial medical examiner or to create a new conflict.⁸

⁷ Appellant's attorney argued at the oral hearing that the issue was whether appellant had sustained a rotator cuff tear and did not object to the remainder of the findings in the Office's December 4, 2006 decision.

⁸ *Jaja K Asaramo*, 55 ECAB 200, 205 (2004).

LEGAL PRECEDENT -- ISSUE 2

Once the Office has met its burden of proof in terminating compensation benefits, the burden of proof shifts to appellant to establish that she remains entitled to compensation benefits after the date of termination. To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background support such a causal relationship.⁹

ANALYSIS -- ISSUE 2

Following the Office's December 4, 2006 decision terminating her compensation and medical benefits due to her right shoulder strain and other conditions, appellant submitted an additional note from Dr. Smith dated May 2, 2007. Dr. Smith noted that appellant's right shoulder had diminished active range of motion as well as a positive impingement test. Again he did not offer any medical reasoning explaining why he believed that appellant's current condition was due to her accepted employment injury of right shoulder strain. Without such medical reasoning, this report is not sufficient to meet appellant's burden of proof in establishing any continuing disability or medical residuals as a result of her accepted condition. As noted, Dr. Smith was on one side of the conflict that Dr. Nice resolved. The additional reports from Dr. Smith are insufficient to overcome the weight accorded Dr. Nice as the impartial medical examiner or to create a new conflict.¹⁰

CONCLUSION

The Board finds that the weight of the medical opinion evidence establishes that appellant has no continuing disability or medical residuals as the result of the accepted conditions of right shoulder strain, right wrist and hand abrasions and contusions, or cervical and lumbar strains. The Office therefore met its burden of proof to terminate appellant's compensation and medical benefits due to these conditions.¹¹

⁹ *Manuel Gill*, 52 ECAB 282, 287 (2001).

¹⁰ *Jaja K Asaramo*, *supra* note 8.

¹¹ The Board notes that the Office is continuing to provide compensation and medical benefits due to appellant's accepted right knee conditions.

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 19, 2008
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