

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

H.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 07-1903
Issued: January 24, 2008**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 July 3, 2007 appellant, through counsel, filed a timely appeal from December 18, 2006 and June 8, 2007 merit decisions of the Office of Workers' Compensation Programs terminating her medical benefits for her cervical condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's medical benefits effective December 18, 2006 on the basis that she no longer had any residuals due to her accepted cervical strain.

FACTUAL HISTORY

On March 6, 2004 appellant, then a 42-year-old mail processor, sustained injury to her shoulders and neck due to repetitive motions associated with her job duties. The Office accepted the claim for bilateral sprain/strain of the shoulders and neck and a right torn rotator cuff.

Appellant underwent surgery on July 27, 2004.¹ She returned to full-time limited duty on September 28, 2004.

On November 11, 2004 appellant's treating physician, Dr. Robert Zanotti, a Board-certified orthopedic surgeon, stated that she was status postarthroscopic decompression of the shoulder, with post-op adhesions/frozen shoulder on the right. He also diagnosed a left shoulder/cervical strain. He recommended restrictions, including "10 [pounds] push-pull with no overhead for three months."

In a report dated February 21, 2005, Dr. Sheldon Kaffer, a Board-certified orthopedic surgeon and Office referral physician, found that appellant demonstrated residuals of her right shoulder condition. He found, however, that the evidence was insufficient to support that she continued to have residuals from the accepted cervical or left shoulder strain. Dr. Kaffer advised that she no longer required medical treatment for either condition.

By letters dated March 15 and May 10, 2006, the Office asked appellant's attending physician, Dr. Zanotti, to review and comment on Dr. Kaffer's report. In a May 6, 2005 duty status report, Dr. Zanotti stated that appellant had bilateral shoulder tendinitis. He stated that appellant was able to work full time with restrictions, including lifting, pulling and pushing no more than 10 pounds and no reaching above shoulder level.

The Office determined that a conflict arose between Dr. Zanotti and Dr. Kaffer as to whether appellant had continuing residuals due to her work-related cervical and shoulder conditions. The Office referred her, together with a statement of accepted facts and the medical record, to Dr. Robert Anschuetz, a Board-certified orthopedic surgeon, for an impartial medical examination. Dr. Anschuetz reviewed the record, including reports of x-rays and magnetic resonance imaging (MRI) scans of the cervical spine. He performed a thorough examination of her shoulders and cervical region. In a report dated December 1, 2005, Dr. Anschuetz found that appellant had residuals of her accepted right shoulder sprain. He noted normal cervical spine x-rays on December 19, 2001 and unremarkable MRI scans of the cervical spine on two occasions. Range of motion of the cervical spine was 50 percent of normal with respect to flexion, extension and bending and turning side to side. Appellant complained of pain towards the base of the neck with flexion. With bending and turning from side to side, she complained of tightness on the opposite side. A neurologic examination revealed normal motor strength and normal Hoffman reflexes. Deep tendon reflexes were present bilaterally. Appellant noted some difference in sensation over the right arm in the C5 and C6 distributions. She informed Dr. Anschuetz that she had been involved in a motor vehicle accident on October 8, 2005 and that her neck pain had been worse since that incident.

On January 6, 2006 the Office asked Dr. Anschuetz to clarify whether appellant had residuals of the work-related cervical strain. In an addendum dated January 13, 2006, Dr. Anschuetz advised that there were no physical findings to support an ongoing cervical sprain

¹ The Board notes that appellant's November 6, 2001 traumatic injury claim File No. 092015372 was accepted for right shoulder and cervical strain. On August 5, 2004 the Office combined File No. 092015372 with File No. 092045007, which became the master file.

related to the accepted injury. He opined that any ongoing cervical symptoms were the result of her October 8, 2005 motor vehicle accident.

On November 15, 2006 the Office notified appellant that it proposed to terminate medical benefits related to her accepted cervical strain. The Office relied on the well-rationalized report from Dr. Anschuetz, the impartial medical specialist

On November 27, 2006 appellant disagreed with the proposed termination. In an August 21, 2006 duty status report, Dr. Zanotti diagnosed bilateral shoulder tendinitis and repeated his recommended restrictions. In reports dated November 22 and December 4, 2006, Dr. Parshotam C. Gupta, a Board-certified anesthesiologist, noted appellant's complaints of neck pain radiating into her shoulders. He diagnosed bilateral shoulder arthropathy and cervical spondylosis, aggravated by an injury at work. Dr. Gupta noted that appellant had an auto accident in 2005, which "probably" aggravated her problem. He stated that appellant's 2004 injury produced a bulging disc and narrowing of the interspace in the cervical region, as well as stenosis of the cervical spine. Dr. Gupta found that she had ongoing cervical pain that radiated into the arms. He opined that her work injury aggravated her arthritis, which caused pain when she works.

By decision dated December 18, 2006, the Office terminated appellant's medical benefits for the accepted cervical sprain/strain. The Office found that the weight of the medical evidence was represented by the report of the referee examiner. It found that Dr. Gupta failed to discuss how appellant's current cervical condition was causally related to her accepted employment injury.

On December 27, 2006 appellant, through her attorney, requested an oral hearing, which was held on April 4, 2007. At the hearing, counsel contended that appellant had ongoing residuals of the accepted cervical condition. Appellant testified that she injured her neck in a 2005 motor vehicle accident and that she received treatment from Dr. Gupta for her pain.

In a December 4, 2006 report, Dr. Gupta diagnosed left shoulder arthropathy with bicipital tendinitis and cervical spondylosis. On December 13, 2006 he diagnosed "cervical spondylosis aggravated by accident, whiplash injury [and] seatbelt injury." On January 19, 2007 Dr. Gupta diagnosed bilateral shoulder sprain and arthropathy. On March 15, 2007 he diagnosed bilateral shoulder arthropathy and right frozen shoulder. April 8, 2007 notes, bearing an illegible signature, reflected decreased range of motion of the neck. Appellant submitted work excuses dated April 16 and May 1, 2007 from Dr. Gupta, who diagnosed bilateral shoulder arthropathy and indicated that appellant's pain had increased.

By decision dated June 8, 2007, the Office hearing representative affirmed the December 18, 2006 decision, finding that the weight of the medical evidence was represented by Dr. Anschuetz' referee report. The representative found that the Office had met its burden of proof to terminate medical benefits for the accepted cervical strain, as the weight of medical evidence established that she had no continuing residuals. The representative stated that the reports of appellant's treating physicians did not provide adequate medical reasoning sufficient to overcome Dr. Anschuetz' impartial opinion.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.² After it has determined that an employee has disability causally related to 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.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁵ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁶

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist is given special weight when well rationalized and based on a proper medical and factual background.⁷

ANALYSIS

The Board finds that the Office met its burden of proof to terminate appellant's medical benefits related to her accepted cervical condition.

The Office properly determined that a conflict arose in the medical opinion evidence as to whether appellant had ongoing residuals due to her accepted cervical strain. Dr. Zanotti, her treating physician, opined that she continued to experience symptoms related to diagnosed cervical strain and recommended restrictions, including 10 pounds push-pull, with no overhead reaching for three months. Dr. Kaffer the second opinion physician, opined that appellant did not have residuals from the accepted cervical strain. He stated that she no longer required medical treatment.

In a report dated December 1, 2005, Dr. Anschuetz reviewed the medical record, including x-ray reports and reports of MRI scans and the statement of accepted facts. His thorough examination of appellant revealed range of motion of the cervical spine to be 50 percent of normal with respect to flexion, extension and bending and turning from side to side.

² *George A. Rodriguez*, 57 ECAB ____ (Docket No. 05-490, issued November 18, 2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

³ *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Elsie L. Price*, 54 ECAB 734 (2003).

⁴ *See Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

⁵ *Roger G. Payne*, 55 ECAB 535 (2004).

⁶ *James F. Weikel*, 54 ECAB 660 (2003).

⁷ *See Richael O'Brien*, 53 ECAB 234 (2001).

Dr. Anschuetz' neurologic examination revealed normal motor strength and normal Hoffman reflexes. Deep tendon reflexes were present bilaterally. He noted appellant's complaints of pain towards the base of the neck with flexion, of tightness with bending and turning from side to side and some difference in sensation over the right arm in the C5 and C6 distributions. Appellant informed Dr. Anschuetz that she had been involved in a motor vehicle accident on October 8, 2005 and that her neck pain had been worse since that incident. In a supplemental report dated January 13, 2006, he stated that there were no objective findings to support an ongoing cervical sprain ascribable to the accepted employment injury. He opined that any ongoing cervical symptoms were the result of appellant's October 8, 2005 motor vehicle accident.

The Board finds that the Office properly relied on Dr. Anschuetz' December 1, 2005 and January 13, 2006 reports in determining that appellant did not have any residuals of her accepted cervical strain. Dr. Anschuetz' opinion is sufficiently well rationalized and based upon a proper factual background. He provided a thorough medical examination and review of the medical records. Dr. Anschuetz reported accurate medical and employment histories. The Office properly accorded special weight to the impartial medical specialist's findings.⁸

Appellant did not submit medical evidence sufficient to overcome the weight of Dr. Anschuetz' opinion or to create a new conflict. Dr. Gupta advised that appellant experienced cervical pain in November and December 2006. However, he did not explain how her diagnosed condition was causally related to the accepted work injury, rather than to her October 2005 motor vehicle accident. Dr. Zanotti's report of August 21, 2006 did not address appellant's cervical condition. None of the medical evidence submitted by appellant contains a rationalized opinion establishing that she had residuals of her accepted cervical condition. As the weight of the medical evidence establishes that she did not have any residuals due to her accepted cervical strain, the Office properly terminated her medical benefits for this condition.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's medical benefits effective December 18, 2006 on the basis that she no longer had any residuals due to her accepted cervical strain.

⁸ *Bryan O. Crane*, 56 ECAB 713 (2005).

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2007 and December 18, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 24, 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