



include a disorder of bursae and tendons in the right shoulder region. Appellant was treated by Dr. Richard B. Taddonio, a family practitioner, who referred her to Dr. Thomas K. Bills, a Board-certified orthopedic surgeon. In a May 25, 2005 report, Dr. Bills reviewed the history of injury and noted that she had an absence of neck stiffness and paresthesias to her arm. A January 7, 2005 magnetic resonance imaging (MRI) scan of the right shoulder indicated a rotator cuff strain with secondary impingement syndrome and secondary cervical radiculopathy. Dr. Bills recommended that appellant resume light-duty work and physical therapy.

On July 25, 2005 appellant underwent a right shoulder surgery, which Dr. Bills performed and the Office authorized. She has not worked since.<sup>1</sup> Dr. Bills submitted reports noting that appellant's cervical radiculopathy was employment related and recommended epidural injections and treatment of a spinal cord lesion.

To determine the nature and extent of appellant's work-related disability, the Office scheduled a second opinion examination with Dr. Steven J. Valentino, an orthopedic surgeon. In a February 8, 2006 report, Dr. Valentino noted the history of injury, reviewed the statement of accepted facts, medical records diagnostic studies of record and set forth findings on examination. He opined that appellant had recovered from her accepted strain and sprain of the right shoulder and upper arm. Dr. Valentino opined that the surgery performed was appropriate and, based on the physical examination and review of the medical records, appellant no longer had any residuals from the work-related injury. He opined that appellant's current symptoms were related to cervical degenerative disc disease with radiculopathy. Dr. Valentino explained that any neurologic defect, such as radiculopathy, had no causal connection to the work injury as there was no mechanism of injury consistent with a cervical spine injury and earlier records documenting a normal neurologic examination.

In a March 8, 2006 report, an Office medical adviser reviewed the medical evidence and opined that appellant's current symptoms related to cervical degenerative disc disease with radiculopathy which was nonwork related. He advised that the proposed surgery to the cervical spine not be approved as appellant's neck complaints were a nonindustrial-related neck condition.

By decision dated March 30, 2006, the Office denied authorization for spinal cord lesion surgery and denied accepting the claim for a cervical spine condition.

On May 2, 2006 appellant requested reconsideration. In an April 20, 2006 report, Dr. Bills disagreed with Dr. Valentino's opinion that appellant's cervical radiculopathy was not causally related to her work injury. He stated that it was a well-described phenomenon to have exacerbation of a preexisting degenerative condition in the cervical spine as a result of a shoulder injury. Dr. Bills noted that appellant had paresthesias to her arm and shoulder. He opined that her cervical radiculopathy was an ongoing condition which would resolve after her shoulder condition resolved; however, this did not happen as her recovery was limited due to her ongoing cervical radicular symptoms. Dr. Bills provided progress reports on appellant's cervical condition.

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<sup>1</sup> Appellant did not stop work following the November 26, 2004 injury.

On May 22, 2006 the Office determined that a conflict in medical opinion arose between Dr. Valentino, the second opinion examiner, and Dr. Bills, appellant's treating physician. It noted that Dr. Valentino opined that appellant had recovered from her work-related injury of November 26, 2004 and was able to return to work. Dr. Valentino further opined that appellant's current cervical condition was related to nonoccupational cervical degenerative disc disease. However, Dr. Bills opined that appellant's cervical symptomology was a result of the work injury. The Office referred appellant, together with a May 22, 2006 addendum to statement of accepted facts, a list of questions and the case record, to Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon.

In a June 14, 2006 report, Dr. Didizian reviewed appellant's history and reported findings on examination. He opined that both subjective and objective medical evidence established that her physical injuries in relation to the November 26, 2004 work injury had resolved. Dr. Didizian advised that he did not know why appellant was having shoulder complaints at the present time. Prior to surgery, steroid injections in the subacromial bursa were performed for both diagnostic and therapeutic purposes. Dr. Didizian advised that a diagnosis of impingement syndrome was confirmed if the patient responded for a short period of time positively to the steroid injection. However, as appellant did not do well after her steroid injection, an impingement syndrome diagnosis was precluded. Dr. Didizian further noted that both the shoulder MRI scan and postoperative MRI scan arthrogram showed no rotator cuff tear or traumatic findings. He found that appellant had recovered from the upper arm and shoulder sprain and strain as well as the surgical procedure and did not require any further medical treatment in relation to the November 26, 2004 work injury. Dr. Didizian opined that appellant could return to her date-of-injury position with no restrictions. Regarding appellant's cervical condition, he stated:

“Dr. Bills mentioned that the patient had cervical radiculopathy and yet his neurologic examination was normal. This is also true of the clinical examination of Dr. Taddonio and Dr. Valentino.... In my opinion the cervical MRI [scan] did not show any evidence of nerve root compression, impingement or any cord changes or disc herniations. The radiologist read it as a protrusion at C6-7 on the right side. The C6-7 disc is going to compress on the C7 nerve root if it is a true herniation.... The EMG [electromyogram] incriminated the C8 nerve root on the left and thus there is no correlation between the EMG and MRI [scan] studies. Clinically, the patient did not show any evidence of cervical root irritation or compression at the time of my examination, nor in the records of the treating physicians.”

Dr. Didizian stated that the mechanism of injury precluded a neck injury or an exacerbation of a preexisting degenerative disease. He noted that the injury was an impact to the shoulder blade from a slowly moving cage, which did not result in immediate, acute pain, rather gradual pain. Dr. Didizian further noted that appellant did not initially have any neck complaints. The first sign of exacerbation of the cervical spine was neck pain. Dr. Didizian concluded that appellant did not sustain a cervical injury or an exacerbation of preexisting degenerative disc disease or acute disc herniation as a result of the November 26, 2004 work incident.

Dr. Bills submitted additional progress reports on appellant's condition.

By letter dated August 2, 2006, the Office informed appellant that it proposed to terminate her compensation benefits as she no longer had residuals or disability from her accepted shoulder conditions and her cervical condition was not causally related to the work injury. It accorded the weight of the medical evidence to Dr. Didizian, the impartial medical specialist.

On August 17, 2006 Dr. Bills asserted that appellant's MRI scan clearly demonstrated a right-sided C6-7 herniated disc and there had been an absence of symptoms prior to the injury. He agreed with Dr. Didizian that he had failed to demonstrate cervical radiculopathy, noting that an EMG should be performed to document whether cervical radiculopathy was present.

By decision dated September 14, 2006, the Office terminated appellant's compensation benefits effective that date on the grounds that the medical evidence established that her injury-related right shoulder condition had resolved and her cervical condition was not causally related to the work injury.

On September 20, 2006 appellant requested an oral hearing, which was held January 22, 2007. She described the work injury, noted her current symptoms and advised that the employing establishment had not offered light duty after her shoulder surgery. Appellant's attorney disagreed with the reports of Dr. Valentino, the second opinion physician, and Dr. Didizian, the impartial specialist. Appellant argued that Dr. Didizian was not properly selected as the impartial medical specialist as the Office's printout showed two doctors were bypassed for being the wrong specialty and that another doctor was first in the selection rotation.

In an October 3, 2006 report, Dr. Bills noted that his review of appellant's right shoulder MRI scan demonstrated a partial tear of the rotator cuff without full thickness tear and secondary impingement. He noted post surgery MRI scan arthrogram demonstrated no significant internal disorder and that appellant's cervical radiculopathy limited her ability to improve. Dr. Bills stated that, on initial examination, appellant was symptomatic of cervical radiculopathy and it had been his hope that it was a secondary phenomenon that would resolve when her shoulder symptoms resolved. He advised that appellant underwent right shoulder surgery on July 25, 2005 and she responded well and made steady progress after her wound healed with range of motion in her shoulder. However, appellant hit a plateau in her therapy due to the persistence of cervical radicular symptoms and the MRI scan arthrogram did not demonstrate any significant internal disorder. Dr. Bills advised, the EMG/nerve conduction study indicated right-sided cervical radiculopathy involving the C8 cervical nerve root and the MRI scan demonstrated a right-sided herniated disc at C6-7. He opined that appellant's cervical radiculopathy and ongoing symptoms in her right shoulder were causally related to the November 26, 2004 work injury. Dr. Bills explained there was no evidence that appellant had any preexisting pathology or symptomatic difficulties in her cervical spine or right shoulder and that the objective evidence supported his conclusion. He advised that further treatment was medically necessary.

By decision dated February 23, 2007, an Office hearing representative affirmed the September 14, 2006 termination decision.

On June 26, 2007 appellant requested reconsideration. On February 27, 2007 Dr. Bills noted that appellant's findings on examination were unchanged and consistent for cervical radiculopathy. On January 19, 2007 he stated that the third sentence in the first paragraph of his May 24, 2005 report reads: "[Appellant] has also more recently, without some neck stiffness and paresthesia to her arm" but noted that the sentence should read: "[Appellant] has also more recently developed some neck stiffness and paresthesias to her arm."

By decision dated August 16, 2007, the Office denied modification of its February 23, 2007 decision.

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

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>2</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>3</sup> The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

Section 8123(a) provides in pertinent part: If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>5</sup> 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, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>6</sup>

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

The Office accepted appellant's claim for right shoulder conditions. It subsequently developed the medical evidence and determined that a conflict in medical opinion arose between Dr. Bills, appellant's attending physician, and Dr. Valentino, an Office referral physician, as to appellant's residuals due to her shoulder condition and whether she sustained a cervical condition due to the November 26, 2004 injury. In order to resolve the conflict, the Office referred appellant to Dr. Didizian for an impartial medical examination.

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<sup>2</sup> *Bernadine P. Taylor*, 54 ECAB 342 (2003).

<sup>3</sup> *Id.*

<sup>4</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>5</sup> 5 U.S.C. § 8123(a).

<sup>6</sup> *See Gloria J. Godfrey*, 52 ECAB 486 (2001).

The Board finds that the opinion of Dr. Didizian is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that residuals due to the accepted right shoulder conditions have ceased. In a June 14, 2006 report, Dr. Didizian reviewed the record and statement of accepted facts and performed a thorough examination of appellant. He opined that she had recovered from the accepted right upper arm and shoulder sprain and strain and she did not require any further medical treatment following surgery. Dr. Didizian discussed appellant's medical care concerning her arm and shoulder as well as the July 25, 2005 shoulder surgery. He noted that the MRI scan of the shoulder and postoperative MRI scan arthrogram of the shoulder showed no rotator cuff tear or other traumatic findings. Dr. Didizian concluded that appellant's accepted injuries had resolved without residuals and that appellant could return to work full time without restrictions. He found that appellant did not sustain any cervical injury as a result of the November 26, 2004 work injury or any exacerbation of preexisting degenerative disease or acute disc herniation on or around November 26, 2004. Dr. Didizian explained that the mechanism of injury precluded a neck injury or an exacerbation of preexisting degenerative disease. He further noted that appellant did not initially have any neck complaints or have immediate, acute pain. Dr. Didizian also noted that the cervical MRI scan did not show any evidence of C7 nerve root compression, impingement or any cord changes or disc herniations. Rather the C8 nerve root on the left was incriminated.

In an August 17, 2006 report, Dr. Bills did not disagree with Dr. Didizian's opinion that the accepted right shoulder conditions have resolved. However, he opined that appellant's MRI scan demonstrated a right-sided C6-7 herniated disc and that it was related to the accepted November 26, 2004 work injury as appellant had an absence of symptoms prior to the injury. On October 3, 2006 Dr. Bills further disagreed with Dr. Didizian about the cause of appellant's cervical radiculopathy. However, he was on one side of the conflict that was resolved by Dr. Didizian. Dr. Bills' reports do not otherwise provide new findings or medical rationale sufficient to establish that any continuing condition or disability is causally related to the November 26, 2004 work injury. The opinion of Dr. Bills is insufficient to create a new medical conflict or to overcome the weight accorded to Dr. Didizian's report.<sup>7</sup>

The Board finds that Dr. Didizian had full history of the relevant facts and evaluated the course of appellant's condition. Dr. Didizian is a specialist in the appropriate field. At the time benefits were terminated, he clearly opined that appellant had no residuals or disability attributable to his accepted shoulder conditions. Dr. Didizian also negated causal relationship between appellant's current cervical condition or an exacerbation of a preexisting degenerative disease or an acute disc herniation as a result of the November 26, 2004 work incident. His opinion, as set forth in his June 14, 2006 report, is found to be sufficiently probative, rationalized and based on a proper factual background. The Board finds that his opinion represents the weight of the medical evidence and is sufficient to justify the Office's termination of appellant's benefits for the accepted right shoulder conditions effective September 14, 2006.

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<sup>7</sup> See *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

## LEGAL PRECEDENT -- ISSUE 2

After a termination or modification of benefits which is clearly justified on the basis of the evidence, the burden of proof to reinstate compensation benefits rest with the claimant. The claimant must establish by the weight of reliable, probative and substantial evidence that a disability related to employment continued to exist after termination of benefits.<sup>8</sup> To establish the requisite causal relationship, the claimant must submit a physician's report which contains a review of the factors of employment identified as causing the claimant's condition and, taking those factors into consideration, along with the results of a clinical examination and the medical history of the claimant, state whether these employment factors caused or aggravated the claimant's condition.<sup>9</sup> Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup>

## ANALYSIS -- ISSUE 2

Following the February 23, 2007 decision, appellant submitted additional reports from Dr. Bills, who noted appellant's status and her history of treatment. As noted, Dr. Bills was on one side of the conflict that was resolved by Dr. Didizian and his reports do not otherwise provide new findings or medical rationale sufficient to establish that any continuing condition or disability was causally related to the November 26, 2004 work injury.

On appeal, appellant asserts that Dr. Didizian's report does not carry the weight of the medical evidence as he was not properly selected from the Physicians Directory System (PDS). She noted that two physicians were bypassed for being the wrong specialty, including Dr. Didizian. Appellant argued that, while Dr. Didizian was eventually selected, the claims examiner selected him without giving reasons why he was initially bypassed and this was an inappropriate use of the PDS by the claims examiner. The Board has reviewed the Office's PDS printout and concludes that there is no evidence the selection process was improper. The record indicates that the only physician ahead of Dr. Didizian in alphabetical order<sup>11</sup> was bypassed as it was noted that the physician did not take back cases. There is no evidence supporting appellant's assertion that the selection was improper. Therefore, the Board finds this argument to be without merit.

Counsel also contends that Dr. Didizian's report is not based on the statement of accepted facts, noting that the statement of accepted facts confirms that appellant worked full duty from her date of injury until her right shoulder surgery on January 25, 2005. However, Dr. Didizian indicated that appellant was out of work for 90 days following the work injury and worked for

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<sup>8</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>9</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>10</sup> *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>11</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4b(1) (May 2003) (the services of all available and qualified Board-certified specialists will be used as far as possible to eliminate any inference of bias or partiality; this is accomplished by selecting specialists in alphabetical order).

six months prior to leaving for her shoulder surgery. The Board has reviewed Dr. Didizian's report and cannot fault it on this ground. Dr. Didizian was provided with an accurate statement of accepted facts and his report generally reflects an accurate knowledge of her relevant history. Thus, this argument is without merit. Counsel further argues that the statement of accepted facts fails to provide an accurate injury date. The Board notes that appellant's work injury occurred on November 26, 2004. While the October 25, 2005 statement of accepted facts notes that such injury occurred on December 26, 2004 the amended statement of accepted facts of May 26, 2006 properly notes the date of injury. While there may be minor errors in the statement of accepted facts, the evidence shows that Dr. Didizian properly addressed appellant's accepted injury of November 26, 2004, the accepted right shoulder/arm conditions and the nonaccepted cervical condition.

Accordingly, the Board finds that appellant has not established that she has any continuing residuals of her accepted employment conditions on or after September 14, 2006.

### **CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective September 14, 2006. The Board further finds that appellant failed to establish that she has any continuing residuals of her accepted employment conditions on or after September 14, 2006.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated August 16 and February 23, 2007 are affirmed.

Issued: October 8, 2008  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board