United States Department of Labor
Employees' Compensation Appeals Board

R.R., Appellant	)	
and	)	**Docket No. 08-2506**
	)	**Issued: August 3, 2009**
DEPARTMENT OF THE NAVY, MARINE CORPS COMBAT DEVELOPMENT COMMAND, Quantico, VA, Employer	)	

Appearances:
Stephen D. Scavuzzo, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On September 22, 2008 appellant, through his attorney, filed a timely appeal from the October 22, 2007 merit decision of the Office of Workers' Compensation Programs and the June 27, 2008 merit decision of the Office's hearing representative terminating wage-loss compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's wage-loss compensation benefits effective October 27, 2007; and (2) whether appellant established that he had a continuing disability after October 27, 2007 causally related to his April 26, 2006 work injury. On appeal, appellant through his attorney, contends that his compensation was improperly terminated as Dr. David P. Sokolow, a Board-certified orthopedic surgeon, clearly indicated that his work injuries still persist. Further, he argues that he cannot return to work with Dr. Robert Smith, a Board-certified orthopedic surgeon's, work restrictions due to the nature of his employment duties.

FACTUAL HISTORY

On May 3, 2006 appellant, then a 36-year-old high-voltage electrician, filed a traumatic injury claim (Form CA-1) alleging that on April 26, 2006 he tore the tendon in his right shoulder from moving a damaged pole and transformers that fell down and tugging heavy debris. The Office initially accepted the claim for bicipital tendinitis, right shoulder sprain and right shoulder arthropathy and subsequently accepted sprain of the right rotator cuff.[1]

Appellant was off work until September 7, 2006, when he returned to light duty within work restrictions provided by his treating physician, Dr. Sokolow, including no lifting or carrying more than two and a half pounds and total limitations on reaching above the shoulders, simple grasping or pushing or pulling with the right arm.

On January 11, 2007 appellant underwent a right shoulder arthroscopy, a debridement of the glenoid labrum and an open anterior acromioplasty.

In a medical report dated February 22, 2007, Dr. Sokolow stated that appellant was doing fairly well until he had a setback when his shoulder was internally rotated and forcibly lifted by another individual. Physical examination revealed a limitation of forward flexion and abduction to 95 degrees and a positive impingement sign. In a duty status report for the same date, Dr. Sokolow provided additional work restrictions, including a total restriction on climbing, simple grasping, fine manipulation, reaching above the shoulder, driving a vehicle and operating machinery. He also restricted all lifting and carrying with the right arm. Dr. Sokolow advised that appellant could not resume work because proper light duty was unavailable.

The record reveals that the employing establishment could not accommodate the new work restrictions and appellant stopped light duty on February 21, 2007.[2]

In a March 5, 2007 statement, appellant alleged that on February 11, 2007 he was arrested in his driveway. During this incident, a police officer picked him off the ground and caused pain to his right shoulder.

In a June 19, 2007 medical report, Dr. Kenneth J. Accousti, a Board-certified orthopedic surgeon, related appellant's complaints of constant, throbbing pain in his right shoulder due to an April 26, 2006 work injury. Physical examination revealed active elevation to about 90 degrees and passive to 160 degrees on the right, with external rotation of 50 degrees and internal to L3. Appellant showed positive impingement and bicep tenderness. Dr. Accousti reviewed magnetic resonance imaging (MRI) scan studies dated April 27, 2006 and June 19, 2007, which showed some sclerosis about the greater tuberosity but no other bony abnormalities. An August 7, 2006

[1] The Board notes that the Office, in its June 26, 2006 decision, only accepted right bicipital tenosynovitis. However, the statement of accepted facts, which was referred to the second opinion physician, indicated acceptance of additional conditions, including sprain of the right rotator cuff and unspecified arthropathy of the right shoulder region. These conditions were also treated as accepted in the Office's proposal to terminate wage-loss benefits.

[2] By letter dated June 26, 2007, the employing establishment notified appellant that he was removed from his position as a high-voltage electrician due to excessive absence and the inability to perform his duties due to a medical condition.

MRI scan of the right shoulder revealed irregularity about the superior labrum and positive superior labrum from anterior to posterior (SLAP) tear, as well as a down-sloping acromion with an acromial spur. Dr. Accousti informed appellant that he could either live with the pain or consider repeat arthroscopic surgery and bicep tenotomy. He stated that appellant could work full duty without any physical restriction or mechanical restriction on his shoulders.

On June 13, 2007 the Office referred appellant and a statement of accepted facts to a second opinion physician.

In a July 3, 2007 medical report, the second opinion physician, Dr. Smith, reviewed the factual and medical history regarding appellant's April 26, 2006 employment injury. Physical examination revealed well-healed scars from the previous surgery but no atrophy or deformity of the shoulder. Active motion in flexion and abduction was 140 degrees without pain and a total of 160 degrees with pain. Internal and external rotation was 70 degrees each without pain and abduction and extension was 40 degrees each without pain. Motor strength was satisfactory and there was no evidence of any instability or further impingement of the shoulder. Dr. Smith opined that he did not have any explanation for appellant's continued shoulder discomfort. He stated that a bony anatomy, shown in his preoperative imaging studies, accounted for his impingement and preexisted the work injury. The operative report showed that appellant did not have any evidence of shoulder arthropathy because the articular surfaces in the shoulder were completely normal. Further, there was no evidence of any ongoing bicep tenosynovitis as Dr. Sokolow noted that the biceps tendon was unremarkable. The only actual pathologies noted during the procedure were a fraying of the anterior aspect of the glenoid labrum, which was a degenerative condition and unrelated to the work injury and the preexisting bony impingement, which was debrided. Once the bony spurs and downward sloping acromion were removed, Dr. Sokolow indicated that both visual and digital inspection in the subacromial space showed no residual impingement. Dr. Smith opined that appellant no longer had any biceps tenosynovitis and never had any right shoulder arthropathy. Further, there did not appear to be any evidence of an ongoing sprain of the right shoulder. Dr. Smith stated that appellant had reached maximum medical improvement with regard to the accepted conditions of bicep tenosynovitis, sprain and arthropathy of the right shoulder, as directly related to his employment. He noted that appellant's bony impingement was a preexisting condition and never accepted as related to the April 2006 injury. Based on current symptoms and restriction of motion in the shoulder, Dr. Smith stated that appellant could return to work with the restriction of avoiding maximum abduction of his right shoulder. However, this restriction would be unrelated to the April 26, 2006 work injury, as the accepted conditions from this injury had completely recovered without residuals.

By letter dated August 17, 2007, the Office proposed termination of appellant's medical and wage-loss benefits on the grounds that Dr. Smith's report was a comprehensive, well-reasoned medical report by an appropriate Board-certified specialist and represented the weight of medical evidence.

In a medical report dated September 12, 2007, Dr. Sokolow stated that appellant still had severe pain localized anteriorly and that his biceps remained markedly inflamed on examination. In an attending physician's report dated September 12, 2007, he stated that appellant injured his shoulder removing a damaged pole. Dr. Sokolow found a decreased range of motion, decreased

strength and tenderness and diagnosed a postoperative shoulder impingement. He indicated that appellant was able to resume light work on February 1, 2007. Dr. Sokolow also stated that he could not determine the date appellant could resume regular work, but indicated that he did not expect any permanent affects as a result of the work injury. In a corresponding September 12, 2007 duty status report, he provided work restrictions, including no lifting or carrying with the right arm, as well as total limitations on climbing, reaching above the shoulder, driving a vehicle, operating machinery or working in high humidity or with chemicals or solvents. Dr. Sokolow noted a diagnosis of refractor tendinitis and stated that the injury occurred while appellant was making repairs to a broken telephone pole.

In a September 12, 2007 letter, Dr. Sokolow stated that the second opinion physician had neither shoulder fellowship training nor any personal experience caring for appellant. He opined that appellant never had any shoulder problems prior to the April 26, 2006 injury. Dr. Sokolow stated that, if appellant had a preexisting condition, he would have had a clinical problem prior to the work injury.

In a September 27, 2007 statement, appellant's attorney contended that Dr. Sokolow clearly stated that the biceps tenotomy condition was ongoing and that his medical opinions were mischaracterized in the proposed termination notice. He further argued that this opinion was in direct conflict to Dr. Smith's medical report and created a conflict of medical evidence.

By decision dated October 22, 2007, the Office terminated appellant's wage-loss benefits effective October 27, 2007 finding that the weight of medical evidence rested with Dr. Smith, who specifically addressed the issue of total disability for work and took into account the nature of the work injury, the total injury and medical history and the objective findings from his examination and the January 11, 2007 operative report. Because Dr. Smith's medical report was of greater weight than those of Dr. Sokolow, no conflict of medical opinion existed. The Office did not terminate medical benefits.

On November 15, 2007 appellant, through his attorney, filed a request for an oral hearing. By letter dated February 22, 2008, counsel withdrew his request for an oral hearing and requested a review of the written record.

In a December 19, 2007 medical report, Dr. Sokolow stated that he examined appellant for persistent biceps pain in the anterior aspect of the right shoulder. Physical examination revealed a full range of motion in the shoulder, continued moderately severe tenderness to palpation of the biceps and a positive Speeds' test. Dr. Sokolow opined that appellant would greatly benefit from vocational retraining.

In a February 20, 2008 medical report, Dr. Sokolow stated that appellant's bicep tendinitis of the right shoulder persisted, but he had moderate symptom improvement with previous injections. Physical examination showed mild limitation of terminal internal and external rotation of the left shoulder with severe tenderness of the bicep and positive Speeds' test. Dr. Sokolow stated that he provided new work restrictions.[3]

[3] These work restrictions are not contained in the record.

In a letter dated March 27, 2008, appellant, through his attorney, argued that the decision to terminate wage-loss benefits misrepresented Dr. Sokolow's medical opinion as he always opined that appellant was totally disabled as a result of the April 26, 2006 work injury. Further, appellant contended that Dr. Smith's restriction was not possible. Due to the nature of his position, which involves climbing high-voltage power lines, he would not be able to avoid maximum abduction to his shoulder.

By decision dated June 27, 2008, an Office hearing representative affirmed the termination of wage-loss benefits finding that Dr. Smith's medical report remained the weight of medical evidence because it presented the most detailed and objective opinion. Further, Dr. Sokolow's medical reports were insufficient to overcome the weight of the medical evidence because they did not outline objective evidence supporting an ongoing disabling condition. His reports also failed to adequately address whether appellant's current symptoms were related to his work injury.

LEGAL PRECEDENT -- ISSUE 1

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

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained right shoulder bicipital tendinitis, sprain of the right shoulder and right rotator cuff and arthropathy of the right shoulder as a result of the April 26, 2006 work injury. The issue is whether it properly terminated appellant's wage-loss benefits effective October 27, 2007.

Appellant returned to light duty on September 7, 2006 within the work restrictions provided by Dr. Sokolow. In a February 22, 2007 medical report, Dr. Sokolow provided additional work restrictions, stating that appellant had a set back when his shoulder was internally rotated and forcibly lifted by another individual. Appellant later stated that on February 11, 2007 his shoulder injury was aggravated when he was pulled up by a police officer during an arrest. He stopped working on February 21, 2007 because the employing establishment could not accommodate the new work restrictions.

The Office referred appellant to Dr. Smith for a second opinion evaluation. Dr. Smith, in a July 3, 2007 medical report, opined that appellant's bicep tenosynovitis had resolved based on the January 11, 2007 operative report, which stated that the bicep tendon was unremarkable.

[4] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

[5] *J.M.*, 58 ECAB ___ (Docket No. 06-661, issued April 25, 2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

[6] *T.P.*, 58 ECAB ___ (Docket No. 07-60, issued May 10, 2007); *Larry Warner*, 43 ECAB 1027 (1992).

Further, he found that appellant never had any evidence of shoulder arthropathy because the operative report showed that the articular surfaces of the shoulder were completely normal. Dr. Smith also stated that there was no evidence of an ongoing right shoulder sprain and no evidence of ongoing bicep tenosynovitis, emphasizing that appellant's treating physician, Dr. Sokolow, noted the biceps tendon were unremarkable. He noted that the bony impingement, which was evident in the preoperative imaging studies, was a preexisting condition and was never accepted by the Office as a work-related condition. Moreover, Dr. Smith pointed out that motor strength was satisfactory and that there was no evidence of any instability or further impingement of the shoulder. He noted that he had no explanation for appellant's continued shoulder discomfort. Dr. Smith opined that the accepted conditions relating to the employment injury had completely resolved without residuals and stated that appellant could return to full duty. The only recommended work restriction was to avoid maximum abduction of the right shoulder, however, this restriction was unrelated to the April 26, 2006 work injury.

In a September 12, 2007 medical report, Dr. Sokolow reported continued pain and that appellant's biceps remained inflamed. In corresponding duty status and attending physician reports, he stated that appellant could return to light duty as of February 1, 2007 and provided work restrictions, including total limitations on lifting or carrying with the right arm, climbing, reaching above the shoulder, driving a vehicle, operating machinery or working in high humidity or with chemical or solvents. Dr. Sokolow diagnosed refractor tendinitis and postoperative shoulder impingement. He indicated that the injury occurred while removing a damaged pole.

The Board finds that the Office properly terminated appellant's wage-loss benefits effective October 27, 2007 based on Dr. Smith's second opinion medical report. Dr. Smith provided a well-rationalized medical opinion that appellant was no longer disabled due to his employment injury, based on a physical examination and a review of the medical history. His findings were corroborated by Dr. Accousti, in a June 19, 2007 medical report, where he found that appellant could return to full duty without restriction.

Although Dr. Sokolow continued to provide work restrictions and maintained that appellant could not return to full duty, the Board finds his medical reports are of diminished probative value and insufficient to create a conflict of medical evidence. He did not provide a rationalized medical opinion explaining how the April 26, 2006 employment injury was related to the diagnosed conditions and work restrictions. In the September 12, 2007 medical documents, Dr. Sokolow stated that appellant continued to have pain and diagnosed refractor tendinitis and shoulder impingement. He also provided work restrictions and noted that these restrictions were due to moving a pole. However, Dr. Sokolow failed to provide a rationalized medical opinion addressing the relationship between the employment injury and the alleged disability.[7] Although he noted that appellant was asymptomatic prior to the April 26, 2006 employment injury, the lack of symptoms prior to an employment injury does not itself provide rationale in support of a causal relationship.[8] Moreover, Dr. Sokolow initially provided work restrictions that the employing establishment was able to accommodate through light duty. He provided additional restrictions in a February 22, 2007 medical report; however, he related these

[7] *See Jaja K. Asaramo*, 55 ECAB 200 (2004).

[8] *See Walter J. Neumann, Sr.*, 32 ECAB 69 (1980).

additional restrictions to a nonwork-related setback. As Dr. Sokolow never explained how this setback was related to the April 26, 2006 work injury, it appears as though the current restrictions relate to the February 11, 2007 intervening event and not the employment injury.

Therefore, the Board finds that the weight of the medical evidence rests with Dr. Smith's July 3, 2007 medical report finding that appellant was not disabled. The Office properly terminated wage-loss compensation benefits effective October 27, 2007.

LEGAL PRECEDENT -- ISSUE 2

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that he had disability causally related to his accepted injury.[9] To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.[10] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[11] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 the employee.[12]

ANALYSIS -- ISSUE 2

The Board finds that the Office properly terminated appellant's wage-loss benefits effective October 27, 2007. Thus, appellant has the burden of proof to establish that he has continuing disability related to the accepted employment injury.

Subsequent to the Office's termination of wage-loss benefits, appellant submitted medical reports from Dr. Sokolow dated December 19, 2007 and February 20, 2008. In the December 19, 2007 medical report, Dr. Sokolow reported persistent bicep pain in the anterior right shoulder. In the February 20, 2008 report, he stated that appellant's bicep tendinitis of the right shoulder persisted but that there was moderate improvement of the symptoms. Dr. Sokolow noted that he provided new work restrictions.

The Board finds that these medical reports are insufficient to establish continuing disability. Although Dr. Sokolow opined that bicep tendinitis continued, he did not explain the

[9] *Manual Gill*, 52 ECAB 282 (2001).

[10] *Id.*

[11] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[12] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

relationship between the continuing disability and the employment injury. Specifically, he failed to provide a rationalized medical opinion describing how the ongoing bicipital tendinitis was related to the April 26, 2006 employment injury. Therefore, the Board finds that these reports are insufficient to overcome Dr. Smith's well-rationalized opinion that appellant was no longer disabled.[13]

The Board notes appellant's contention on appeal that his work injuries persist. This argument is irrelevant to the underlying issue of disability. The Office terminated wage-loss compensation but did not terminate medical benefits.[14] Thus, the only issue is whether appellant established that he was still disabled as a result of the April 26, 2006 employment injury. While Dr. Sokolow discussed a continuing condition, he did not provide a detailed medical opinion addressing appellant's disability and its relationship to the April 26, 2006 injury. Thus, these medical reports are not dispositive on the issue of continuing disability. Further, appellant argues on appeal that he could not return to full employment with the work restriction provided by Dr. Smith due to the nature of his work duties. This contention is also of little merit as he specifically indicated that the restriction was unrelated to appellant's employment injury.[15]

CONCLUSION

The Board finds that the Office properly terminated appellant's wage-loss benefits effective October 27, 2007. The Board also finds that appellant did not establish that he was disabled after October 27, 2007 causally related to his April 26, 2006 employment injury.

[13] Medical reports not containing medical rationale on causal relationship are entitled to little probative value. *Jimmie Duckett*, 52 ECAB 332 (2001).

[14] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment. *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

[15] To establish disability, a claimant must show that he or she is disabled from work due to an employment-related injury. *See Paul E. Thams*, 56 ECAB 503 (2005).

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2008 decision of the Office of Workers' Compensation Programs and the October 22, 2007 decision of the Office are affirmed.

Issued: August 3, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board