

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

C.H., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
West Palm Beach, FL, Employer)

Docket No. 09-288
Issued: August 25, 2009

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 November 10, 2008 appellant filed a timely appeal of an October 10, 2008 decision of the Office of Workers' Compensation Programs affirming the termination of her compensation benefits and denying a period of wage-loss compensation. 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 met its burden of proof to terminate appellant's compensation benefits effective November 21, 2006; (2) whether appellant met her burden of proof to establish that she had any continuing condition or disability after November 21, 2006 causally related to her June 27, 2003 employment injury; and (3) whether appellant established that she was disabled between January 31 and July 31, 2006 causally related to her June 27, 2003 employment injury.

FACTUAL HISTORY

On June 27, 2003 appellant, a 40-year-old computerized forwarding system clerk, injured her right upper arm and shoulder after a stack of buckets toppled over. She stopped work on June 28, 2003. At the time of injury, appellant regularly worked four hours a day, five days a week.¹ The Office accepted her claim for right shoulder impingement, right side cervical radiculopathy and aggravated degenerative disc disease at C4, C5 and C6. Appellant returned to work on July 1, 2003 but had intermittent wage loss, for which she received compensation from the Office through May 13, 2004. She resumed her regular four-hour-a-day work schedule.

Dr. Michael Cooney, a Board-certified orthopedic surgeon, treated appellant for right shoulder rotator cuff impingement and right cervical degenerative disc disease with radiculopathy. On July 13, 2004 he noted that her right shoulder pain had quieted down and diagnosed resolved right shoulder rotator cuff impingement. Dr. Cooney noted continued right cervical radiculopathy secondary to degenerative disc disease at C4-5 and C5-6 aggravated by the June 27, 2003 work injury. On November 9, 2004 he diagnosed right shoulder rotator cuff tear, right cervical radiculitis and trapezial muscle spasms secondary to radiculopathy. Dr. Cooney advised that appellant could resume regular duty on August 4, 2004 within certain restrictions.

In a report dated February 24, 2006, Dr. Cooney noted appellant's complaint of shoulder, neck and upper back pain. He diagnosed right shoulder rotator cuff tendinitis and cervical radiculopathy. Dr. Cooney advised that appellant continue working four hours a day with restrictions. In a July 21, 2006 attending physician's report, he diagnosed right shoulder rotator cuff tear. Dr. Cooney also advised that appellant was not yet able to resume regular work but could work four-hour days.

On July 24, 2006 appellant filed a claim for compensation for four hours per day for the period between January 31 and July 31, 2006.

By decision dated October 6, 2006, the Office denied appellant's claim for compensation between January 31 and July 31, 2006, finding that the medical evidence was insufficient to support disability during the claimed period. Appellant requested a hearing.

In a report dated October 13, 2006, Dr. Cooney provided a history of injury and noted that he initially diagnosed right shoulder rotator cuff tendinitis with impingement and right cervical radiculopathy secondary to aggravation of degenerative disc disease at C4-5 and C5-6. He stated that appellant's symptoms were consistent with her initial injury on June 27, 2003 when her right shoulder was struck by 17 flats buckets.

On November 21, 2006 the Office terminated compensation benefits effective that day based on Dr. Cooney's July 13, 2004 report finding that appellant's right rotator cuff impingement had resolved.

¹ The employing establishment indicated that appellant had previously worked eight hours daily but, due to restrictions from prior compensation claims, she did not work eight hours daily when her June 27, 2003 injury occurred. No other compensation claims are presently before the Board.

In a December 29, 2006 decision, an Office hearing representative set aside the October 6 and November 21, 2006 decisions and remanded the case for further medical development. The Office was directed to determine whether appellant's disability was causally related to the accepted injury of June 27, 2003; whether the accepted right shoulder rotator cuff condition had resolved; and whether she had right shoulder rotator cuff impingement or right shoulder rotator cuff tear due to the accepted injury.

On January 19, 2007 the Office referred appellant with a statement of accepted facts to Dr. David Lotman, a Board-certified orthopedic surgeon, to determine the extent of her disability and residuals related to her June 27, 2003 work-related injury.

In a February 13, 2007 report, Dr. Lotman reviewed the evidence of record and statement of accepted facts and provided a detailed summary of the history of injury and treatment. In reviewing appellant's history, he advised that she reported having right rotator cuff surgery in 1994, from which she made an 80 percent recovery. Dr. Lotman's examination revealed that appellant's cervical spine demonstrated normal cervical lordosis with no paraspinous or periscapular pain or spasm. Appellant's right shoulder had no periscapular or deltoid atrophy and her range of motion had nonreproducible shoulder crepitation. Dr. Lotman indicated that his findings consisted of left carpal tunnel syndrome that was not work related, right cervical radiculopathy unsupported by objective physical findings and inconsistent with appellant's history and aggravated degenerative disc disease at C4, C5 and C6 that was diagnosed by Dr. Cooney but not confirmed on her cervical magnetic resonance imaging (MRI) scan, which was normal. Dr. Lotman noted that, in light of the normal cervical MRI scan, he could not corroborate Dr. Cooney's diagnosis of degenerative disc disease at C4-6. He also noted that his examination findings were not consistent with cervical radiculopathy and, therefore, he opined that these conditions were not present. Dr. Lotman also opined that appellant's right shoulder impingement had resolved based on her range of motion and lack of atrophy. He indicated that appellant's impingement condition was generally caused by rotator cuff insufficiency, either tendinitis or tearing and therefore, her rotator cuff condition had also resolved. Dr. Lotman opined that appellant's job was not aggravating or perpetuating her symptoms. He noted that she had mild disability of the right shoulder from her rotator cuff repair in 1994. In an attached work capacity evaluation form, Dr. Lotman indicated that appellant could not perform her usual job but could work eight hours daily with permanent restrictions.

By decision dated February 22, 2007, the Office denied appellant's claim for compensation between January 31 and July 31, 2006, finding that she did not submit medical evidence supporting disability during the claimed period. In another decision of the same date, it terminated appellant's wage-loss compensation and medical benefits as of November 21, 2006, finding that the weight of the medical evidence established that the accepted work-related condition of June 27, 2003 had resolved.

On March 6, 2007 appellant requested an oral hearing that was held on July 25, 2007. She submitted a July 10, 2007 report from Dr. Cooney, who noted right shoulder impingement-type symptoms most consistent with a partial thickness tear of the distal right supraspinatus tendon caused by her June 27, 2003 injury. Dr. Cooney reported intermittent right cervical radiculopathy to the right upper extremity consistent with cervical degenerative disc disease at C4-5 and C5-6 aggravated by the June 27, 2003 injury. He noted that, as he did not treat

appellant prior to the June 27, 2003 injury, it was impossible for him to be 100 percent accurate regarding how much of her condition preexisted the work injury. Dr. Cooney recommended an arthroscopy for the tear to her right shoulder distal supraspinatus. He indicated that appellant's right shoulder problems were partially preexisting injuries but were aggravated by the June 27, 2003 injury. Dr. Cooney stated that her cervical degenerative disc disease had progressed to C6-7 but this was natural regardless of the work injury. He noted that it was only clear that appellant had an aggravation of cervical degenerative disc disease. Dr. Cooney recommended that she continue working four hours a day with restrictions.

By decision dated October 4, 2007, an Office hearing representative affirmed the February 22, 2007 decisions. She found that the weight of the medical evidence rested with Dr. Lotman and supported that appellant no longer had any residuals of her June 27, 2003 injury. An Office hearing representative further found that appellant was not disabled for work between January 31 and July 31, 2006 as appellant had returned to work at four hours a day, which was the same number of hours she was working prior to her injury.²

On July 31, 2008 appellant requested reconsideration. She requested a referee evaluation for a conflict in medical evidence and asked that her case be reopened for medical treatment for the accepted conditions. Appellant submitted an April 28, 2008 MRI scan report of her cervical spine from Dr. Thomas Brown, a radiologist, who found disc degeneration present throughout the cervical spine and mildly bulging disc material and spondylosis present posteriorly at C5-6 and C6-7. Dr. Brown also found mild degenerative foraminal stenosis present asymmetrically on the left. Appellant also submitted medical reports already of record.³

In an October 10, 2008 decision, the Office denied modification of its October 4, 2007 decision finding that appellant was not entitled to continuing benefits as the medical evidence supported the work-related condition and disability had resolved. It also found that the evidence did not establish her entitlement to compensation from January 31 to July 31, 2006.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ 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.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion

² The hearing representative also advised that the Office should declare an overpayment for wage-loss compensation paid to appellant between August 12, 2003 and May 13, 2004 as it had paid her for four hours a day during that period when she had already been working four hours a day.

³ In an October 2, 2008 letter, the Office notified appellant that she was not entitled to a referee evaluation as the weight of the medical evidence rested with Dr. Lotman. It also noted that it could not reopen her case because of its prior decision denying her claim.

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

⁵ *Vivien L. Minor*, 37 ECAB 541 (1986).

evidence based on a proper factual and medical background.⁶ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that the claimant no longer has residuals of an employment-related condition, which requires further medical treatment.⁷

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained right shoulder impingement, right side cervical radiculopathy and aggravated degenerative disc disease at C4, C5 and C6 due to the employment-related incident on June 27, 2003. It initially terminated her compensation benefits effective November 21, 2006. After a hearing representative vacated the November 21, 2006 decision, the Office referred appellant to Dr. Lotman for a second opinion.

In a February 13, 2007 report, Dr. Lotman explained that appellant's right cervical radiculopathy was unsupported by his objective physical findings as an examination of her cervical spine revealed normal cervical lordosis with no paraspinous or periscapular pain or spasm. He further explained that appellant's aggravated degenerative disc condition diagnosed by Dr. Cooney was not confirmed by the MRI scan of her cervical spine, which was normal and, therefore, he opined that the aggravated condition was no longer present. Regarding appellant's right shoulder impingement, Dr. Lotman opined that this condition had resolved as his examination revealed no atrophy or shoulder crepitation. He opined that, as an impingement condition is generally caused by rotator cuff insufficiency and because the impingement had resolved, appellant's rotator cuff condition had also resolved. After reviewing her record and conducting his own examination, Dr. Lotman was able to conclude that appellant had no residuals related to her June 27, 2003 injury and that she was able to work full time with restrictions on a permanent basis. He noted that she did have residual disability that affected her work restrictions due to a preexisting 1994 right rotator cuff repair. Dr. Lotman found no basis on which to attribute any continuing condition to the June 27, 2003 work injury.

The Board finds that Dr. Lotman's report represents the weight of the medical evidence. The Office properly relied on his report to terminate appellant's benefits. Dr. Lotman's opinion is based on proper factual and medical history as he had a statement of accepted facts and his report contained an accurate summary of the relevant medical evidence. Furthermore, he analyzed this information with reference to his findings on examination to reach a reasoned conclusion regarding appellant's condition.⁸

While the record contains reports from Dr. Cooney providing some support for continuing residuals, they are insufficient to create a conflict or overcome the report of

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

⁷ *E.J.*, 59 ECAB ____ (Docket No. 08-1350, issued September 8, 2008).

⁸ *See Naomi Lilly*, 10 ECAB 560 (1959) (the opportunity for and thoroughness of examination, the accuracy and completeness of the doctor's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the doctor's opinion are factors which enter into the weight of an evaluation).

Dr. Lotman. Dr. Cooney's July 13, 2004 report indicated that the accepted right shoulder impingement condition had resolved. In subsequent reports, he diagnosed rotator cuff tear, cervical radiculitis and rotator cuff tendinitis as a result of the June 27, 2003 injury. On July 10, 2007 Dr. Cooney advised that appellant's right shoulder problems were partially preexisting injuries that had been aggravated by the June 27, 2003 injury. However, he also stated that, as he did not treat appellant prior to the June 27, 2003 injury, he was uncertain how much of her condition preexisted the work injury. Dr. Cooney noted that it was only clear that appellant had an aggravation of cervical degenerative disc disease. The Board has held that the weight of medical evidence is determined by its reliability, its probative value and its convincing quality. The opinion of a physician must be of reasonable medical certainty and must be supported by medical rationale explaining causal relationship.⁹ Dr. Cooney's July 10, 2007 opinion is equivocal in that he was uncertain regarding the degree to which appellant's condition was preexisting.¹⁰ Furthermore, his reports diagnosing rotator cuff tear and rotator cuff tendinitis were not supported by adequate medical rationale explaining how these unaccepted conditions were the result of the June 27, 2003 work injury.¹¹

There is no other medical evidence contemporaneous with the termination of appellant's benefits, which supports that she has any continuing employment-related condition. Consequently, the weight of the medical evidence rests with Dr. Lotman and establishes that appellant had no residuals due to her accepted condition. Therefore, the Office met its burden of proof to terminate her compensation benefits. The Board, however, will modify the effective date of the termination of benefits to February 13, 2007, the date of Dr. Lotman's medical report, which established that the accepted conditions had resolved. The February 22, 2007 Office decision terminated benefits as of November 21, 2006 the date of the initial termination decision, which was set aside by the Office hearing representative's December 28, 2006 decision.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.¹²

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a

⁹ *Id.*; see *K.W.*, 59 ECAB ____ (Docket No. 07-1669, issued December 13, 2007).

¹⁰ *D.D.*, 57 ECAB 734 (2006) (medical opinions that are speculative or equivocal in character are of diminished probative value).

¹¹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value). See also *T.M.*, 60 ECAB ____ (Docket No. 08-975, issued February 6, 2009) (for conditions not accepted by the Office, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence).

¹² *I.J.*, *supra* note 4.

physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.¹³

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any disability or residuals causally related to her June 27, 2003 employment injury. The medical evidence submitted after the hearing representative's October 4, 2007 decision, affirming the termination of benefits, does not establish that she had any continued disability or residuals of her work injury.

In an April 28, 2008 MRI scan report of appellant's cervical spine, Dr. Brown found mild degenerative disc disease. However, this report is of diminished probative value as Dr. Brown did not provide any opinion as to whether the findings of disc disease caused any residual disability related to the June 27, 2003 employment injury.¹⁴ The other medical evidence submitted by appellant on reconsideration had been previously considered by the Office.

Appellant also asserted on reconsideration that there was a conflict in the medical evidence. However, as noted, the opinion of Dr. Cooney is of insufficient probative value to create a conflict with the well-reasoned report of Dr. Lotman. Consequently, appellant has not met her burden of proof to establish that she had a continuing condition or disability after February 22, 2007 causally related to her June 27, 2003 work injury.

LEGAL PRECEDENT -- ISSUE 3

For each period of disability claimed, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury. Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.¹⁵ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.¹⁶ The Board will not require

¹³ *Id.*; *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁴ *K.W.*, 59 ECAB ____ (Docket No. 07-1669, issued December 13, 2007) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁵ *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

¹⁶ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *see Huie Lee Goal*, 1 ECAB 180, 182 (1948).

the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.¹⁸

ANALYSIS -- ISSUE 3

The Office accepted that appellant sustained several conditions due to her June 27, 2003 work injury. Appellant asserts that her injury caused disability from January 31 to July 31, 2006. However, this contention is not supported by the medical evidence of record.

The reports from Dr. Cooney contemporaneous with the claimed time period indicated that appellant was able to work four-hour days. Dr. Cooney's treatment records note that appellant was advised to work part-time, four-hour days, with lifting restrictions. There is no medical evidence of record contemporaneous with the claimed period that supports that appellant was unable to work during that period or that work within her restrictions was not made available.

The record also reflects that between January 31 and July 31, 2006 appellant worked four-hour workdays within the restrictions advised by Dr. Cooney. This signified that she returned to her same part-time work schedule as she had worked at the time of the June 27, 2003 injury, four hours a day. The Federal Employees' Compensation Act and its implementing regulations define the term "disability" as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.¹⁹ The evidence supports that appellant worked and earned wages between January 31 and July 31, 2006 and that these earnings wages were at the same rate as what she was receiving at the time of her injury.

As the evidence does not reflect that appellant had incapacity, because of the employment injury, to earn the wages she was receiving at the time of the June 27, 2003 injury, appellant has not established that she was disabled for work during the claimed period.

¹⁷ *G.T., id.*; *Fereidoon Kharabi*, *supra* note 15.

¹⁸ *I.J.*, *supra* note 4; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁹ 20 C.F.R. § 10.5(f).

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits. The Board will modify the effective termination date to be February 22, 2007. The Board also finds that appellant did not meet her burden of proof in establishing that she had any continuing condition or disability after February 22, 2007. The Board further finds that appellant did not establish that she was disabled between January 31 and July 31, 2006 causally related to her June 23, 2003 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated October 10, 2008 is affirmed.

Issued: August 25, 2009
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