

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

L.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Burlington, NJ, Employer**

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**Docket No. 09-327
Issued: August 17, 2009**

Appearances:

*Aaron B. Aumiller, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 17, 2008 appellant filed a timely appeal from a November 26, 2007 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she also sustained a shoulder injury during the March 8, 2005 incident; and (2) whether the Office met its burden of proof to terminate appellant's compensation benefits effective May 3, 2007 on the grounds that she had no residuals of her accepted right wrist tendinitis. On appeal, appellant's attorney argues that, as the Office paid for appellant's right shoulder surgery, a shoulder condition was accepted and therefore as Dr. Zohar Stark, a Board-certified orthopedic surgeon, found residuals of her shoulder condition, his opinion is not sufficient to terminate her compensation benefits. He alternatively argued that a conflict in medical evidence had been created.

FACTUAL HISTORY

On March 8, 2005 appellant, then a 43-year-old rural carrier, filed a Form CA-1, traumatic injury claim, alleging that she injured her right wrist that day opening a mailbox that was frozen shut. She did not stop work and submitted April 5, 2005 reports in which Dr. Craig H. Rosen, a Board-certified orthopedic surgeon, noted that appellant initially injured her right wrist in December 2004 when picking up large mail parcels and described the March 8, 2005 employment incident and her complaint of shooting pain and occasional tingling in her left hand. Dr. Rosen provided findings on physical examination, diagnosed a triangular fibrocartilage complex (TFCC) tear and possible carpal tunnel syndrome and advised that she could return to work with no use of the right hand. On April 11, 2005 the Office accepted that appellant sustained employment-related right wrist tendinitis.

In a May 3, 2005 report, Dr. Daniel J. Ragone, a Board-certified physiatrist, noted that when appellant opened the mailbox on March 8, 2005, she felt increased pain and discomfort in her shoulder. He performed nerve conduction (NCS) and electromyographic (EMG) studies which were consistent with mild irritation of the C5 and C6 nerve roots on the right with no brachial plexopathy, myopathy or peripheral nerve entrapment appreciated. On May 12, 2005 Dr. Rosen reported the NCS and EMG findings and advised that appellant's cervical radiculitis was related to the employment injury. A July 12, 2005 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated a small left paracentral C5-6 disc herniation with possible impingement of the left C7 nerve root, moderate C5-6 foraminal stenosis and no appreciable cervical cord deformity. Dr. Rosen continued to submit reports with diagnoses of right TFCC tear and cervical radiculitis and recommendations of limited duty. On August 2 and 18, 2005 he reported that appellant's wrist and hand were doing well and that her cervical spine was not very symptomatic but that she complained about her right shoulder. Shoulder examination demonstrated good motion and tenderness over the cuff with no instability. Dr. Rosen diagnosed tendinitis and provided restrictions to her physical activity.¹ He continued to report that appellant's shoulder remained tender and on October 31, 2005 reported a positive impingement test in abduction and recommended arthroscopy of the shoulder. Dr. Rosen continued to advise that appellant should work restricted duty.²

By report dated November 15, 2005, Dr. Eric D. Strauss, a Board-certified orthopedic and hand surgeon, noted that appellant injured her right wrist in December 2004 and aggravated the injury on March 8, 2005. He provided wrist examination findings and diagnosed TFCC of the right wrist and recommended surgical repair. A November 16, 2005 MRI scan of the right shoulder demonstrated a small amount of fluid in the subcoracoid bursa and no evidence of rotator cuff tendon tear. On November 18, 2005 Dr. Rosen performed arthroscopic surgery on

¹ On October 28, 2005 appellant filed a recurrence claim, stating that she had intermittent pain radiating across her back and down her legs and knee joint pain. The Office adjudicated this as a new injury under file number xxxxxx003, accepted for aggravation of posterior horn of left medial meniscus. Under file number xxxxxx796 appellant had a previous claim accepted for derangement and tear of the posterior horn of the left medial meniscus. She submitted some medical evidence regarding her knee condition. However, under the file number xxxxxx375 for the instant case, by letter dated March 24, 2006, the Office accepted that appellant sustained a recurrence of disability on October 28, 2005.

² Appellant also submitted chiropractic reports with illegible signatures.

the right shoulder for impingement syndrome. He provided reports of appellant's postoperative care and advised that she could not work. On February 3, 2006 Dr. Strauss performed arthroscopic surgery on her right wrist. In reports dated February 7 and 21 and March 7 and 21, 2006, he described appellant's postoperative condition and advised that she could not work. On April 4, 2006 Dr. Strauss advised that she had made excellent progress and could return to light duty with no use of the affected hand and a 10-pound lifting restriction. Dr. Rosen also continued to submit reports regarding appellant's right shoulder. He noted that she had wrist surgery and was out of work. Appellant had both physical and occupational therapy for her right upper extremity conditions. On May 1, 2006 Dr. Rosen reported that her shoulder moved well but that she had tenderness over the acromioclavicular (AC) joint. On May 2, 2006 Dr. Strauss reported that appellant had full range of motion of the right wrist with intact neurovascular status and tendon function and could return to her usual duties in two weeks.

On July 17, 2006 Dr. Rosen noted appellant's report of right hand numbness and advised that she could not work. An August 1, 2006 NCS and EMG performed by Dr. Ragone was consistent with chronic irritation of the right C6 and C7 nerve roots. On August 10, 2006 Dr. Rosen noted the NCS and EMG findings and advised that appellant was very tender over the AC joint. He recommended additional right shoulder surgery and advised that she could not work. On September 1, 2006 Dr. Rosen performed right shoulder arthroscopic debridement, subacromial decompression and resection of the distal clavicle. He continued to advise that appellant had shoulder discomfort, that she continue physical therapy and that she could not work.

On December 10, 2006 the Office referred appellant to Dr. Stark, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a January 11, 2007 report, Dr. Stark reported that on March 3, 2005 she developed pain in her right wrist and shoulder when opening a mailbox and noted his review of the medical records and her complaint of tingling in the fingers of her right hand and radiating lower back pain. Physical examination of the right wrist demonstrated preserved motion and no grip strength deficit. Tinel, Phalen and Adson tests were negative. Dr. Stark advised that there were no objective findings relating to right rotator cuff syndrome and no findings to substantiate calcifying tendinitis of the right shoulder and that her limited shoulder motion was due to pain. He opined that it did not appear that appellant sustained a right shoulder injury as a result of an employment incident and that any disability was not caused by the March 8, 2005 employment injury. Dr. Stark noted that his shoulder range of motion findings and those of Dr. Rosen were not in agreement which led him to believe that she was magnifying shoulder symptoms. He provided restrictions to her physical activity and recommended that appellant continue treatment for her right shoulder for four to six weeks and then could return to her regular duties. By report dated February 5, 2007, Dr. Rosen noted that examination of the right shoulder was unchanged with tenderness over the cuff and distal clavicle. He recommended a functional capacity evaluation. On February 22, 2007 Dr. Stark reiterated that right rotator cuff syndrome was not related to the March 8, 2005 employment injury.

On March 5, 2007 appellant accepted a limited-duty position for eight hours a day. On April 4, 2007 the Office proposed to terminate her compensation benefits on the grounds that the medical evidence, as characterized by Dr. Stark's report, established that she no longer suffered disability or residuals due to the accepted right wrist tendinitis. Appellant, through her attorney,

disagreed with the proposed termination.³ On May 4, 2007 the Office finalized the proposed termination, effective March 3, 2007. On May 21, 2007 appellant's attorney requested a hearing and appellant submitted two statements describing the December 2004 and March 8, 2005 employment incidents. Appellant disagreed with Dr. Stark's conclusions and provided an April 5, 2005 report in which Dr. Rosen noted that she was complaining of pain shooting to her right shoulder. She did not appear at the hearing, held telephonically on September 6, 2007. Appellant's attorney argued that there was a conflict between Dr. Rosen and Dr. Stark regarding whether her right shoulder condition was employment related. In a supplementary statement, he argued that Dr. Stark's April 5, 2005 report supported appellant's contention that her shoulder condition was caused by the employment injury.

By decision dated November 26, 2007, an Office hearing representative credited the opinion of Dr. Stark and found that the Office properly terminated appellant's compensation and medical benefits and that her claimed shoulder condition was not causally related to the March 8, 2005 incident.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.⁵

Section 10.5(ee) of Office regulations defines a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.⁶ To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that

³ Appellant's attorney requested a copy of Dr. Stark's report and an extension of time. By letter dated April 18, 2007, the Office noted that on February 2, 2007 he had been provided a copy of Dr. Stark's report and denied his request for an extension.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁷

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.⁹ Neither the mere 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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant did not establish that her right shoulder condition was employment related. While the Office authorized her right shoulder surgery, the fact that the Office authorized and paid for some medical treatment does not establish that the condition for which she received treatment was employment related.¹¹ In an April 5, 2005 report, Dr. Rosen noted appellant's complaint of pain shooting to her right shoulder and beginning in August 2005 noted her complaints of right shoulder pain. He performed surgical procedures on her right shoulder on November 18, 2005 and September 1, 2006 and in duty status reports dated September 19 and November 3, 2005, Dr. Rosen checked a form box "yes" advising that the history of injury given by appellant corresponded to the history of injury and described clinical findings including right rotator cuff tendinitis. When a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹² Dr. Rosen did not provide a clear and specific opinion regarding the cause of appellant's right shoulder condition in any of his reports. 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.¹³ Dr. Rosen's reports are therefore insufficient to establish that appellant's right shoulder condition was employment related.¹⁴ The record also contains reports from Dr. Strauss,

⁷ Gary J. Watling, *supra* note 5.

⁸ Jacqueline M. Nixon-Steward, 52 ECAB 140 (2000).

⁹ Leslie C. Moore, 52 ECAB 132 (2000); Gary L. Fowler, 45 ECAB 365 (1994).

¹⁰ Dennis M. Mascarenas, 49 ECAB 215 (1997).

¹¹ Glen E. Shriner, 53 ECAB 165 (2001).

¹² D.D., 57 ECAB 734 (2006).

¹³ Willie M. Miller, 53 ECAB 697 (2002).

¹⁴ D.D., *supra* note 12.

who noted that she had right shoulder tenderness. As he provided no opinion regarding the cause of appellant's right shoulder condition,¹⁵ his opinion is insufficient to meet her burden. In Dr. Stark's comprehensive report of January 11, 2007, he advised that her right shoulder condition was not caused by and that any ongoing disability was not related to the March 8, 2005 work injury. He reiterated this in his February 22, 2007 report.

To establish causal relationship, a claimant must submit a physician's report in which the physician reviews the employment factors identified by the claimant as causing the claimed condition and, taking these factors into consideration as well as findings upon examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.¹⁶ For conditions not accepted by the Office as being employment related, it is appellant's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove any such relationship.¹⁷ Appellant submitted no such evidence in this case. Furthermore, as the opinions of Dr. Rosen and Dr. Strauss are insufficient to establish causal relationship, they are insufficient to establish that a conflict in medical evidence has not been established.¹⁸ The Board therefore finds that the evidence of record is insufficient to establish that appellant sustained a right shoulder injury or medical condition caused by the March 8, 2005 work injury.

LEGAL PRECEDENT -- ISSUE 2

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.¹⁹ 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.²⁰

ANALYSIS -- ISSUE 2

The accepted condition in this case is right wrist tendinitis. Dr. Strauss, who performed arthroscopic surgery on appellant's right wrist on February 3, 2006, advised on April 4, 2006 that she had made excellent progress and could return to light duty. On May 2, 2006 he advised that she had full range of motion with intact neurovascular status and tendon function and could

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁸ 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. *Manuel Gill*, 52 ECAB 282 (2001).

¹⁹ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

²⁰ *Id.*

return to her regular duties in two weeks. Dr. Stark advised on January 11, 2007 that appellant had normal right wrist motion and strength with negative Tinel, Phalen and Adson tests. In reports dated from November 11, 2005 to February 5, 2007, Dr. Rosen provided no positive findings regarding her right wrist condition. While appellant had positive EMG and NCS findings of cervical radiculopathy and related hand numbness, this condition has not been accepted as employment related. As there was no medical evidence to support that she had an ongoing residuals or disability of her accepted right wrist tendinitis, the Office properly terminated her medical and compensation benefits for this condition effective March 3, 2007.

CONCLUSION

The Board finds that appellant did establish that she sustained a shoulder injury on March 8, 2005 and that the Office met its burden of proof to terminate her compensation benefits effective May 3, 2007 on the grounds that she had no residuals of her accepted right wrist tendinitis.²¹

ORDER

IT IS HEREBY ORDERED THAT the November 26, 2007 decision Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

²¹ The Board notes that appellant submitted evidence subsequent to the Office's November 26, 2007 decision. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence that was before the Office at the time it issued its final decision. 20 C.F.R. § 501.2(c); *G.G.*, 58 ECAB ___ (Docket No. 06-1564, issued February 27, 2007).