

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

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**V.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Overland Park, KS, Employer**

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**Docket No. 09-1524  
Issued: April 20, 2010**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 12, 2009 appellant filed a timely appeal of the March 6, 2009 merit decision of the Office of Workers' Compensation Programs terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits effective March 6, 2009.

**FACTUAL HISTORY**

On January 24, 2007 appellant, then a 51-year-old retail associate, injured her left shoulder, left hip and back, when handling a box weighing about 25 pounds. The Office accepted the claim for left shoulder sprain and upper arm acromioclavicular (AC) sprain. Appellant did not stop work but began working with restrictions.

In a November 27, 2006 report, Dr. Staci M. Jordan, a Board-certified family practitioner, advised that appellant had several chronic illnesses, including fibromyalgia, undifferentiated autoimmune disorder, factor V Leiden coagulopathy and migraine headaches. These conditions caused a great deal of leg, back, hip and shoulder pain and were aggravated by her work environment as she had to stand for up to eight hours a day and lift heavy parcels. Dr. Jordan recommended restrictions to appellant's job duties. In a January 23, 2007 note, she reiterated that restrictions and modifications to appellant's workstation were needed to diminish exacerbations of her fibromyalgia. In a September 20, 2007 duty status report, Dr. Jordan noted the history of injury and advised that appellant had left shoulder impingement and left sacroiliitis due to the work injury. She also listed fibromyalgia. Dr. Jordan opined that appellant could only work with restrictions.

In a January 2, 2007 report, John D. Rackliffe, a physician's assistant for Dr. Sean Wheeler, a Board-certified family practitioner and pain management specialist, indicated that appellant was initially diagnosed with migraines, left shoulder impingement and a possible C5-6 disc bulge on her first visit on September 21, 2006. He opined that appellant's condition was aggravated, in part, by her work environment which required standing for eight hours daily and lifting heavy parcels. Dr. Wheeler advised that appellant needed work restrictions and an ergonomically correct workstation. In a July 31, 2007 report, he opined that appellant's sacroiliitis was work related and that she had developed a piriformis muscle spasm which was not unusual. Dr. Wheeler recommended a course of physical therapy for strengthening.

To determine whether appellant continued to have residuals of her January 24, 2007 left shoulder and AC sprain accepted conditions and whether she was capable of working her date-of-injury position without restrictions, the Office referred appellant to Dr. Dennison R. Hamilton, a physician Board-certified in preventative and occupational medicine, for a second opinion. In an October 30, 2007 report, Dr. Hamilton reviewed the history of injury, medical records and statement of accepted facts. On examination, appellant was tender over the AC joint and had increased pain on cross body adduction. The rotator cuff was intact. Testing of all major motor groups was normal with no motor, sensory or reflex deficits. Dr. Hamilton advised that a July 19, 2006 left shoulder magnetic resonance imaging (MRI) scan showed degenerative joint disease. He also listed the conditions for which appellant was being treated before January 24, 2007. Dr. Hamilton opined that appellant had chronic left shoulder AC degenerative joint disease and chronic L5-S1 severe degenerative disc disease with preexisting L5 on S1 spondylolisthesis both of which were long-standing. He found that the January 24, 2007 work injuries had resolved and that she could return to her date-of-injury position with the recommendation that her workstation be modified to accommodate her short stature.

On November 13, 2007 the Office sought clarification from Dr. Hamilton, noting that he did not fully address all of its questions. In a supplemental report dated November 20, 2007, Dr. Hamilton advised that the January 24, 2007 work injury caused a strain or exacerbation of appellant's preexisting and chronic conditions of AC degenerative joint disease and lumbar degenerative disc disease. Since the injury caused a strain or exacerbation of her preexisting conditions, there would be no further objective findings.

Dr. Jordan submitted additional reports indicating appellant could only work with restrictions on lifting. She recommended physical therapy. In a February 15, 2008 report,

Dr. Jordan stated that the January 24, 2007 work injury exacerbated her left sacroiliitis and caused a left shoulder impingement. She indicated the delay in physical therapy led to increased pain and decreased ability for appellant to perform certain work activities as well as causing long-term restrictions.

In March 4 and April 10, 2008 reports, Dr. Wheeler noted the history of injury. He diagnosed left shoulder impingement, fibromyalgia, and other autoimmune disorders. Dr. Wheeler opined that appellant could work with restrictions. He advised that, if appellant had physical therapy to treat her shoulder and sacroiliac joint pain, some of the restrictions may be lifted with improvement.

On April 15, 2008 the Office referred appellant for a follow-up evaluation with Dr. Hamilton regarding whether there were any active employment-related aggravations of appellant's preexisting conditions. In an April 29, 2008 report, Dr. Hamilton noted that appellant had complaint of left shoulder and left hip pain. Appellant stated that the pain in her left shoulder and left hip had not improved since her October 30, 2007 evaluation and she has been unable to initiate any physical therapy. Dr. Hamilton set forth findings on examination of AC joint tenderness and a functional left shoulder range of motion. He diagnosed chronic left shoulder AC degenerative joint disease and chronic lumbar spondylosis causing left hip pain. Dr. Hamilton opined that appellant had recovered from her work-related injuries and that any aggravation of her chronic and preexisting AC degenerative joint disease and lumbar spondylosis had ceased.

Both Dr. Jordan and Dr. Wheeler continued to opine that appellant could work with restrictions and needed physical therapy.

On October 9, 2008 the Office expanded the claim to include temporary aggravation of lumbosacral spondylosis without myelopathy, ceased as of October 30, 2007. Appellant received compensation benefits.

By notice dated October 10, 2008, the Office proposed to terminate appellant's wage-loss and medical benefits, finding that the weight of the medical evidence established that the accepted conditions had resolved. It accorded determinative weight to the opinion of Dr. Hamilton, the second opinion specialist.

In response to the proposed termination of benefits, appellant submitted an October 31, 2008 statement. In September 19, 2007 and January 22, 2008 progress notes, regarding appellant's left sacroiliitis and left shoulder impingement, Dr. Jordan advised that appellant could work with restrictions. Physical therapy was also recommended. In an October 24, 2008 letter, Dr. Jordan noted the history of injury and appellant's treatment. She stated that the Office never approved physical therapy and appellant continued to have pain in the left sacroiliac and lumbar region. Dr. Jordan opined appellant's persistent sacroiliitis was causally related to the January 24, 2007 work injury.

In a March 4, 2008 progress note, Dr. Wheeler advised that appellant continued to have scapulothoracic dysfunction in the left shoulder including impingement symptoms. On October 21, 2008 he advised that he had seen appellant since November 2006 for migraine

conditions. Dr. Wheeler indicated that she was diagnosed with scapulothoracic dysfunction, AC joint inflammation, and low back pain, including lumbar facet arthropathy and sacroiliitis, as a result the January 24, 2007 work injury. He noted appellant's treatment after the work injury and opined that appellant's left hip condition was causally related to the work injury and still active.

By decision dated March 6, 2009, the Office terminated appellant's compensation benefits for her left shoulder condition effective March 6, 2009.<sup>1</sup>

### **LEGAL PRECEDENT**

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>

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

### **ANALYSIS**

The Office accepted that appellant sustained sprain of left shoulder and acromioclavicular sprain. It terminated appellant's compensation benefits for the left shoulder conditions effective March 6, 2009 on the grounds the accepted left shoulder condition had resolved without residuals. The Office accorded determinative weight to the opinion of Dr. Hamilton, the second opinion specialist.

The Board finds Dr. Hamilton's opinion is sufficiently rationalized to establish that appellant's employment-related left shoulder condition had resolved. In a comprehensive report dated October 30, 2007, Dr. Hamilton reviewed the statement of accepted facts and the medical record. He advised that appellant had chronic left shoulder AC degenerative joint disease and

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<sup>1</sup> The Office began developing the issue of whether appellant's left hip condition was causally related to the January 24, 2007 work injury. As no final decision was issued at the time the present appeal was filed, the Board does not have jurisdiction over this issue. See 20 C.F.R. § 501.2(c).

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

<sup>6</sup> *Pamela K. Guesford*, 53 ECAB 726 (2002).

chronic L5-S1 degenerative disc disease with preexisting L5-S1 spondylosis. Dr. Hamilton noted reviewing appellant's history and reported findings on examination. He opined that the accepted conditions had resolved. In his November 20, 2007 supplemental report, Dr. Hamilton explained that the work injury exacerbated appellant's preexisting and chronic left shoulder AC degenerative joint disease and lumbar degenerative disc disease. He explained such aggravation had resolved as there was no objective basis on which to attribute any continuing disability. In an April 29, 2008 report, Dr. Hamilton reevaluated appellant. He provided an assessment of chronic left shoulder AC degenerative joint disease and chronic lumbar spondylosis causing left hip pain. Dr. Hamilton opined there were no residuals from the accepted work injuries. He specifically found the aggravation of the left shoulder AC degenerative joint disease and lumbar spondylosis had ceased and indicated that continuing symptoms were attributable to the preexisting conditions.

Dr. Jordan and Dr. Wheeler continued to find that appellant needed work restrictions and physical therapy. The physicians, however, failed to discuss the accepted shoulder conditions or provide a rationalized opinion addressing how residuals of the accepted left shoulder conditions caused disability. Neither physician provided any objective findings to support a need to continue work restrictions due to the accepted shoulder conditions or provided an explanation as to how appellant's work-related conditions remained active or disabling. The record establishes that appellant had a left shoulder condition that preexisted the accepted sprains of January 24, 2007. Dr. Jordan's February 18, 2008 report stated that her work injury caused a left shoulder impingement, but this condition was not accepted by the Office.<sup>7</sup> Dr. Jordan did not provide any medical reasoning explaining the reasons the impingement was employment related and not due to appellant's preexisting conditions. She did not clearly support that the accepted left shoulder and AC joint sprains caused residuals or contributed to appellant's need for work restrictions. The medical evidence of record, at the time the Office terminated benefits, did not provide reasoned support to indicate that appellant had any ongoing residuals of the accepted left shoulder conditions.

Dr. Hamilton's reports are based on an accurate factual background and provide sufficient medical rationale for his conclusion.<sup>8</sup> The Office, therefore, met its burden of proof to terminate appellant's medical benefits as the weight of the medical evidence indicates that the accepted left shoulder condition and temporary aggravation of lumbosacral spondylosis had ceased.<sup>9</sup>

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<sup>7</sup> See *T.M.*, 60 ECAB \_\_\_ (Docket No. 08-975, issued February 6, 2009) (for conditions not accepted or approved by the Office as being due to an employment injury, 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).

<sup>8</sup> *Michael S. Mina*, 57 ECAB 379 (2006) (in accessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality; the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion, are facts which determine the weight to be given to each individual report).

<sup>9</sup> As noted, the Office's March 6, 2009 termination decision only pertains to appellant's accepted left shoulder conditions.

**CONCLUSION**

The Board finds that the Office met its burden of proof to terminate compensation benefits effective March 6, 2009 for the accepted left shoulder conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 6, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2010  
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