

September 22, 2007. She was off work for intermittent periods from December 10, 2007 to February 5, 2008 because the employing establishment did not have any light-duty positions available. Appellant returned to light duty on February 19, 2008, performing work scanning labels on a conveyor belt.

In a report dated September 9, 2008, Dr. Christopher Maeda, a specialist in orthopedic surgery, stated that appellant had work-related complaints of ongoing, chronic neck and right shoulder discomfort with impingement. He attributed her symptoms to the repetitive nature of her work and advised that she was doing well as long as she did not exceed her prescribed restrictions. Dr. Maeda noted that appellant's neck and shoulder pain had been aggravated by working at a machine which had a heavy lever, weighing about 20 pounds. Appellant was also required to place heavier objects onto a conveyor belt. These activities caused inflammation and pain around her right shoulder, right arm and neck. Appellant had been reassigned to a machine that required lighter lifting; but this job also aggravated her right arm and neck conditions.

Dr. Maeda prescribed restrictions for appellant, including: no lifting with both hands exceeding 20 pounds; keeping her arms and elbows close to her sides; lifting only at the chest level; no pushing carts which weighed more than 50 pounds; no reaching forward with weights exceeding one pound with her elbows completely extended; no reaching above her shoulder or head level with weights exceeding two pounds; no lifting exceeding two pounds with the right arm and five pounds with the left arm with her elbows close to her side to the chest level; no reaching above the shoulder level exceeding two pounds more than once every 20 minutes. Appellant could do some mild repetitive light-duty work, lifting only up to two pounds with either arm, but only for 30 minutes at a time every 30 minutes. Dr. Maeda stated that the restrictions were permanent.

In an October 21, 2008 report, Dr. Maeda advised that appellant's symptoms were currently under control because she was working at a job in which her work duties did not exceed her restrictions. He noted that her condition had stabilized because she was no longer assigned to the machine which seemed to aggravate her symptoms.

The Office referred appellant for a second opinion examination with Dr. Joan Sullivan, an orthopedic surgeon. In a November 11, 2008 report, Dr. Sullivan reviewed appellant's medical history and the statement of accepted facts. On examination, there were no objective findings of any ongoing shoulder strain and appellant's neck examination was essentially normal. Although appellant indicated she had a history of radicular symptoms, her examination did not support this assertion. Dr. Sullivan stated that, if there was a radicular pattern secondary to cervical spine disease, it was not secondary to an employment injury but was preexisting and not aggravated by any work factors. She confirmed that appellant had a work-related right shoulder condition, but it was relatively asymptomatic at present. Despite appellant's complaints of constant right shoulder pain, testing on examination did not reveal any actual shoulder condition. Dr. Sullivan advised that appellant had been successfully treated by her treating doctor with injections and modification to her activities. Appellant's magnetic resonance imaging (MRI) scan of the right shoulder supported that she had chronic tendinosis and tendinopathy with changes also supporting chronic impingement. There was also a possibility of labral changes. Dr. Sullivan noted that this was based on an MRI scan done without contrast, without which she could not accept the diagnosed conditions. Moreover, if there were labral

changes they would be considered degenerative and not work related. Dr. Sullivan expressed disagreement with appellant's treating doctors, who found that appellant had cervical spine disease and radicular pain secondary to her job activities. She noted that appellant's workplace activities were not such as to cause or put her at risk for increased cervical degenerative disc disease, which was age related and a preexisting condition.

Dr. Sullivan noted that appellant's right shoulder symptoms had apparently diminished. Although appellant still complained of shoulder and arm pain, she did not have positive findings on examination. She still had some neck and arm symptoms which were secondary to a cervical neck disease; but the MRI scan findings and examination were relatively mild. The radicular pattern of appellant's pain was not supported on physical examination or the MRI scan results. Dr. Sullivan found that appellant required no further medical treatment. She opined that her work restrictions appeared to be somewhat excessive and were not caused by her degenerative cervical disease. Dr. Sullivan provided work restrictions for appellant's right shoulder tendinitis and bursitis. She stated that these restrictions were issued to prevent a flare-up or recurrence of appellant's work-related symptomatology; any restrictions pertaining to her cervical spine disease were not caused by her employment.

By letter dated December 8, 2008, the Office asked Dr. Sullivan to clarify her report. It noted that, although appellant's right shoulder MRI scan showed changes evidencing chronic right shoulder impingement, Dr. Sullivan opined that her right shoulder symptoms were diminished and that appellant did not have a positive examination. The Office asked Dr. Sullivan to clarify whether appellant had chronic right shoulder impingement and, if so, to address the objective findings. It also asked that Dr. Sullivan complete an attached work restriction form.

In a December 13, 2008 report, Dr. Sullivan advised that appellant's right shoulder MRI scan showed tendinitis and bursitis and that she had pain complaints with provocative testing on examination. She advised, however, that appellant had normal responses and did not show any current signs of right shoulder tendinitis or bursitis. Dr. Sullivan advised that appellant had a benign, normal examination. Appellant's chronic right shoulder impingement was based on her tendinitis and bursitis and she would be likely to reinjure her shoulder if she engaged in demanding shoulder work above shoulder level.

Dr. Sullivan noted that appellant's work restrictions outlined in her November 11, 2008 report pertained to her right shoulder tendinitis, were preventive in nature and were intended to preclude her from having a flare-up or recurrence of shoulder symptoms. None of the work restrictions were imposed due to chronic neck pain. The accepted neck strain had resolved and appellant's cervical degenerative disc disease preexisted the employment injury.

On February 9, 2009 the Office proposed to terminate appellant's compensation benefits. It found that the weight of the medical evidence was represented by Dr. Sullivan's opinion.

In a February 17, 2009 report, Dr. Maeda reiterated that appellant had experienced chronic neck and right shoulder discomfort due to the repetitive nature of her work. She had been doing quite well in terms of her symptoms not flaring and being able to work full time since she followed the work restrictions he outlined. Dr. Maeda agreed with Dr. Sullivan that

appellant's activities involving reaching or lifting with the right arm above shoulder level should be limited to only 25 pounds to prevent repetitive activity from aggravating her right shoulder. He disagreed, however, with Dr. Sullivan's opinion that the repetitive activities of her job would not put her at risk for aggravating her right arm radiculopathy. Dr. Maeda acknowledged that appellant had degenerative findings in her neck which were a preexisting condition and age related; but the frequent reaching required by her job caused an aggravation of the cervical stenosis and radiculopathy.

Dr. Maeda also disagreed with Dr. Sullivan as her opinion was contradicted by two prior surgeons who had examined appellant and had recommended surgical intervention as an option to ameliorate the impingement due to her cervical stenosis. However, conservative management was preferred to surgery. Dr. Maeda reiterated that appellant's neck and shoulder symptoms were quiescent because she was working within her prescribed restrictions. As long as appellant continued with her work restrictions, her symptoms would remain stable and she would not require surgery.

By decision dated March 23, 2009, the Office terminated appellant's compensation benefits, finding that Dr. Sullivan's opinion represented the weight of the medical evidence.

In a June 16, 2009 report, Dr. Maeda reiterated his prior opinion. On June 23, 2009 he advised that appellant informed him that management told her that her restrictions no longer applied. Dr. Maeda noted that she experienced an increase in her neck and right shoulder symptoms.

By letter dated March 23, 2009, appellant requested an oral hearing, which was held on July 17, 2009. At the hearing, she stated that her modified job scanning bar codes on package labels on a conveyor belt occasionally required her to reach above her shoulder level to scan some of the packages. Appellant asserted that this activity aggravated her neck and right shoulder. Her supervisor reassigned her to another section to case letters because she was no longer needed to work scanning labels on the conveyor belt. Appellant stated that this job also entailed repetitive activities. Appellant's attorney noted that Dr. Maeda found that the repetitive motion involving the use of the scanner and casing mail caused irritation around the musculature of the neck and radicular symptoms in the right arm. Counsel contended that Dr. Sullivan's referral opinion was not a sufficient basis on which to terminate medical benefits because the physician did not find that appellant's accepted right shoulder and neck conditions had resolved. He noted that Dr. Sullivan stated that in the event appellant resumed working at repetitive duties she would experience a recurrence of her symptoms.

By decision dated October 19, 2009, the Office affirmed the March 23, 2009 termination decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ The

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which require further medical treatment.²

Section 8123 (a) of the Federal Employees' Compensation Act 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."³

ANALYSIS

The Office accepted appellant's claim for right shoulder strain, right shoulder impingement syndrome and cervical strain. The March 23, 2009 decision relied on the November 11 and December 13, 2008 reports of Dr. Sullivan, an Office referral examiner, to find that appellant's accepted neck and right shoulder conditions had ceased and that she no longer had any residuals from these conditions. The Board finds that the Office did not meet its burden of proof.

Dr. Sullivan advised that there were no objective findings to support any ongoing shoulder strain or neck radiculopathy. While she advised that appellant did have degenerative cervical disease, this was preexisting and unrelated to an employment injury or employment work factors. Dr. Sullivan stated that the work-related right shoulder condition was asymptomatic and that appellant's work restrictions were imposed to prevent a flare-up or recurrence of her work-related symptomatology. She stated that any restrictions pertaining to appellant's cervical spine disease were not caused by her employment. Dr. Sullivan noted that results of a right shoulder MRI scan showed tendinitis and bursitis, but noted that appellant had a normal examination and did not show any current signs of these conditions. She advised that appellant's right shoulder was prone to reinjury if she performed activities above shoulder level or exceeded her work restrictions. Dr. Sullivan noted that the work restrictions were preventive in nature and were intended to preclude any recurrence of appellant's shoulder symptoms. She reiterated that none of appellant's work restrictions were imposed due to chronic neck pain or for her accepted neck strains, which had resolved, or for the cervical degenerative disc disease which preexisted her employment injury. Dr. Sullivan concluded that appellant did not require further medical treatment for her accepted, employment-related conditions as these conditions had resolved.

Appellant's treating physician, Dr. Maeda found that appellant had ongoing, chronic neck and right shoulder discomfort with impingement. He disagreed with Dr. Sullivan as to whether appellant's accepted conditions had resolved as two other consulting surgeons who had examined appellant had recommended surgical intervention for her cervical stenosis. Dr. Maeda noted, however, that conservative management was preferred and reiterated that appellant's neck and shoulder symptoms were quiescent because she was working within her prescribed

² *Mary A. Lowe*, 52 ECAB 223 (2001).

³ 5 U.S.C. § 8123(a).

restrictions. He did not find that appellant's accepted conditions had ceased, but that her symptoms had stabilized since she was allowed to work with restrictions on her work activities.

The Board finds that a conflict in medical opinion arose between Dr. Maeda and Dr. Sullivan as to whether appellant's accepted conditions have resolved. Due to this conflict, the Office did not meet its burden of proof to terminate appellant's compensation benefits.⁴

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate compensation benefits as of March 23, 2009.

ORDER

IT IS HEREBY ORDERED THAT the October 19, 2009 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 17, 2010
Washington, DC

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

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

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

⁴ Given the resolution of the first issue, the second issue of continuing disability is moot.