

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

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<b>A.C., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 10-668</b>
	)	<b>Issued: October 14, 2010</b>
<b>U.S. POSTAL SERVICE, BULK MAIL</b>	)	
<b>CENTER, Cincinnati, OH, Employer</b>	)	
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<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

**DECISION AND ORDER**

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

**JURISDICTION**

On January 11, 2010 appellant, through his representative, filed a timely appeal from the December 1, 2009 merit decision of the Office of Workers' Compensation Programs, which affirmed the termination of his compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

**ISSUE**

The issue is whether the Office properly terminated appellant's compensation.

**FACTUAL HISTORY**

On July 25, 2007 appellant, then a 53-year-old modified mail clerk, sustained an injury in the performance of duty when a hamper full of mail fell and hit his left arm and shoulder. The Office accepted his claim for left shoulder sprain/strain and a cervical strain.<sup>1</sup> Appellant received compensation for wage-loss and medical benefits. He returned to work six hours a day on November 19, 2007 and received compensation for partial disability.

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<sup>1</sup> OWCP File No. xxxxxx656 (sub).

A conflict arose between Dr. E. Gregory Fisher, an orthopedic surgeon and Office referral physician, and Dr. Rajbir S. Minhas, an internist and pain management consultant. Dr. Fisher was of the opinion that appellant's cervical strain had healed with no active residuals but that his left shoulder sprain/strain was still active with objective findings. He found that appellant could return to work eight hours a day with restrictions. Dr. Glenn A. Reinhart, the attending orthopedic surgeon, agreed with Dr. Fisher's findings regarding the left shoulder and restrictions and had "no other additional comments to add." Dr. Minhas, his consultant, was of the opinion that appellant continued to suffer from a cervical sprain. He also diagnosed sprain of the arm and shoulder and limited appellant to six hours' work with restrictions.

To resolve the conflict on the issue of cervical strain and disability for work, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Malcolm A. Meyn, Jr., a Board-certified orthopedic surgeon. On October 7, 2008 Dr. Meyn related appellant's history and reviewed the medical evidence, including the reports of Drs. Fisher, Reinhart and Minhas. Appellant reported continued pain in the posterior aspect of his left shoulder. He had tenderness at the acromioclavicular joint and motion of the left shoulder was markedly restricted. Examination of the cervical spine, however, was normal. Dr. Meyn found that the accepted cervical strain and left shoulder strain were resolved with no current objective findings to support continuing residuals. In a supplemental report, he added that appellant was able to work permanently as a modified mail clerk for eight hours a day.

On March 23, 2009 the Office terminated compensation for medical and wage-loss benefits effective the following day. It found that the weight of the medical evidence established that appellant no longer demonstrated residuals or required medical treatment for the accepted conditions of left shoulder strain and cervical strain.

In a decision dated December 1, 2009, an Office hearing representative affirmed the termination of appellant's compensation. The hearing representative found that Dr. Meyn's opinion represented the weight of the medical evidence and established that appellant no longer had any residuals from his work-related injuries.

### **LEGAL PRECEDENT**

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.<sup>2</sup> Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>3</sup> After it has determined that an employee has disability causally related to her 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.<sup>4</sup>

If there is 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

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>4</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

make an examination.<sup>5</sup> When there exist 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 upon a proper factual background, must be given special weight.<sup>6</sup>

### ANALYSIS

The Office accepted that appellant sustained a left shoulder sprain/strain and a cervical strain in the course of his federal employment. It therefore carries the burden of proof to justify the termination of compensation for those accepted medical conditions.

A conflict arose between Dr. Fisher, the second opinion orthopedist, and Dr. Minhas, the attending physician's pain management consultant, on whether appellant continued to suffer from cervical strain and how many hours he could work with restrictions. The Office therefore properly referred appellant to Dr. Meyn, an orthopedic surgeon, for an impartial medical evaluation under section 8123(a) of the Act.

The Office provided Dr. Meyn with appellant's case record and a statement of accepted facts so he could base his opinion on a proper factual and medical history. Dr. Meyn's conclusion that appellant no longer suffered residuals of the accepted cervical strain is supported by the apparent lack of current complaints and by findings on physical examination, which were normal. The Board finds that Dr. Meyn's opinion on the accepted cervical strain is sound and rational and is entitled to special weight in resolving the conflict. The Board therefore finds that the Office has met its burden of proof to justify the termination of compensation for the accepted cervical strain. The Board will affirm the Office's December 1, 2009 decision on the issue of cervical strain.

Dr. Meyn does not hold the status of impartial medical specialist on the issue of the accepted left shoulder sprain/strain. There was no disagreement on this issue between Dr. Fisher and Dr. Reinhart or between Dr. Fisher and Dr. Minhas. All three were of the opinion that the accepted left shoulder sprain/strain was still active. So on this issue, Dr. Meyn is considered a second-opinion physician whose opinion may be probative but will not carry special weight.

Dr. Meyn concluded that appellant's left shoulder strain was resolved with no current objective findings to support continuing residuals. His opinion is not well reasoned. Appellant continued to complain of pain in the posterior aspect of his left shoulder. He had tenderness at the acromioclavicular joint and motion of the left shoulder was markedly restricted. Without some discussion or explanation for these complaints and findings, it is not clear how they are consistent with Dr. Meyn's conclusion. Because Dr. Meyn's opinion lacks sufficient rationale on this issue, the Board finds that it has diminished probative value and does not justify the Office's termination of compensation for the accepted left shoulder sprain/strain. The Board will therefore reverse the Office's December 1, 2009 decision on the issue of left shoulder sprain/strain.

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<sup>5</sup> 5 U.S.C. § 8123(a).

<sup>6</sup> *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

Because Dr. Meyn's opinion does not establish that appellant has recovered from his accepted left shoulder sprain/strain without residuals, there remains an unresolved issue of disability causally related to that accepted injury. Because Dr. Meyn's opinion did not resolve the issue, the Board finds that the Office has not met its burden to justify the termination of appellant's compensation for partial wage loss. The Board will therefore reverse the Office's December 1, 2009 decision on the issue of disability for work.

**CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation for the accepted cervical strain. The Board also finds, however, that the Office improperly terminated his medical and wage-loss compensation for the accepted left shoulder sprain/strain.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 1, 2009 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: October 14, 2010  
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