

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

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N.A., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Pittsburgh, PA, Employer )

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**Docket No. 10-307  
Issued: January 25, 2011**

*Appearances:*

*Thomas R. Uliase, 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  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 13, 2009 appellant, through his attorney, filed a timely appeal from the August 14, 2009 merit decision of the Office of Workers' Compensation Programs finding no residuals of his employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office met its burden of proof to terminate appellant's compensation on the grounds that he had no residuals of his February 21, 2004 work injury.

On appeal appellant, through his attorney, argues that the opinion of the impartial medical examiner is insufficient to constitute the weight of medical evidence.

**FACTUAL HISTORY**

This case has previously been before this Board. Appellant alleged injury on February 21, 2004 when he fell backwards at work. In a February 26, 2008 decision, the Board set aside the Office's denial of his claim and remanded the case for further development on

whether he sustained injury to his left shoulder.<sup>1</sup> The facts of the case as set forth in the Board's prior decision are incorporated by reference.

By letter dated March 19, 2008, the Office referred appellant to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion. In a report dated April 16, 2008, Dr. Hanley reviewed a history of the February 21 and October 18, 2004 incidents at work. He noted that appellant had a history of diabetes mellitus and that diagnostic testing of the left shoulder showed some degenerative disease but nothing impacting the neural elements. An electromyography was suggestive of C5-6 radiculopathy on the left. Dr. Hanley noted that appellant continued at full duty and did not seek medical treatment for the February 21, 2004 incident until September. He listed findings on examination, noting that appellant had bilateral adhesive capsulitis in the shoulders. Dr. Hanley noted that adhesive capsulitis was a known complication of diabetes mellitus that tended to start spontaneously. Given the fact that appellant took some months to present to a physician, he opined that appellant's diagnosed condition was spontaneous and due to his underlying chronic disease rather than any specific traumatic episode. Dr. Hanley found that appellant could perform his regular work duties.

In a June 13, 2008 decision, the Office denied appellant's claim based on the opinion of Dr. Hanley. In a September 9, 2008 decision, an Office hearing representative found a conflict in medical opinion between Dr. Hanley and Dr. Gwo-Chin Lee, an attending orthopedic surgeon, who attributed appellant's left shoulder condition to the incidents at work.

By letter dated October 15, 2008, the Office referred appellant to Dr. Gregory Maslow, a Board-certified orthopedic surgeon, selected as the impartial medical specialist. In a report dated November 11, 2008, Dr. Maslow reviewed a history of the accepted incidents at work and noted appellant's complaint of left shoulder pain with numbness radiating down the arm to the fingers of the left hand. Appellant also had complaints concerning his right arm and neck. Examination of the cervical spine showed mild tenderness at C6-7, with no suboccipital tenderness, tilt or spasm and 75 percent of expected range of motion. Compression was negative for radicular signs or symptoms. The shoulder girdle examination revealed tenderness in the superior trapezius and dorsal scapular region. There was no atrophy, spasm or droop on either side with a full range of motion at both shoulders. Strength testing was normal. Neurological examination of both upper extremities was normal, reflexes intact and strength normal with excellent bilateral grip and pinch and no atrophy. Dr. Maslow reported that examination of the thoracic spine was normal with no spasm or tenderness found. There was no lumbar spasm, no abnormal tilt or flattening of the lumbar lordosis with a full range of motion in all planes. Neurologic examination of both lower extremities was reported as normal with symmetric reflexes. There was no loss of strength or sensation to either lower extremity and no atrophy. Straight leg raising was normal. There was some patellofemoral crepitus at both knees, without effusion, synovitis, instability and full range of motion.

Dr. Maslow reviewed the medical record and noted that a November 11, 2004 magnetic resonance imaging scan of the left shoulder showed tendinosis in the supraspinatus portion of the

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<sup>1</sup> Docket No. 07-1489 (issued February 26, 2008). On February 21, 2004 appellant fell backwards from two steps, an incident accepted by the Office. The record reflects a second claim of injury on October 15, 2004 he fell down stairs while delivering mail.

cuff with no frank tear. The labrum was intact with some degenerative change at the acromioclavicular joint. Diagnostic testing of the cervical spine on January 18, 2005 showed a central disc herniation at C3-4, degenerative changes at C4-5 with disc bulging at C4-5 and C6-7. Dr. Maslow reviewed the reports of Dr. Lee and Dr. Hanley and noted that appellant was treated for the February 2004 injury on September 28, 2004 and diagnosed with a contusion and sprain to the left shoulder. He stated that appellant sustained a contusion to the left shoulder and a cervical sprain with radiculopathy on February 21, 2004. Dr. Maslow noted that appellant had restricted motion of the cervical spine related to the disc herniation which was identified on the magnetic resonance imaging scan that he attributed to degenerative changes not causally related to the February 21, 2004 incident. He found that appellant had no objective evidence of ongoing cervical radiculopathy despite the findings on the prior electromyogram. Appellant had restricted motion at both shoulders and cuff tendinitis that was not related to the employment incident. Dr. Maslow advised that appellant had healed from the February 21, 2004 injury and required no additional medical treatment. He noted that appellant could perform his normal work activities without restrictions related to the February 21, 2004 injury.

In a January 6, 2009 decision, the Office accepted appellant's claim for contusion of the left shoulder and cervical sprain, both resolved. It found that the opinion of Dr. Maslow established that residuals of the accepted conditions ceased by the time of the impartial examination.

On January 13, 2009 appellant requested a hearing that was held on May 29, 2009. He addressed the February and October 2004 injuries. Appellant still had residual pain in his left shoulder and neck. He noted that he was still worked in his letter carrier position.

By decision dated August 14, 2009, an Office hearing representative affirmed the January 6, 2009 decision. She found that the weight of medical opinion rested with Dr. Maslow, who found no residuals or disability related to the accepted injuries.

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> It may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.<sup>3</sup> The Office's burden of proof 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. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.

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<sup>2</sup> *I.J.*, 59 ECAB 408 (2008).

<sup>3</sup> *J.M.*, 58 ECAB 478 (2007).

<sup>4</sup> *Id.*; see also *Anna M. Blaine*, 26 ECAB 351 (1975).

Section 8123(a) of the Federal Employees' Compensation Act provides that, 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 make an examination.<sup>5</sup> When the case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical evidence, the opinion of such specialist will be given special weight when based on a proper factual and medical background and sufficiently well rationalized on the issue presented.<sup>6</sup>

### ANALYSIS

In the prior appeal, the Board remanded the case for further development on whether appellant sustained a left shoulder injury related to the February 21, 2004 incident in which he fell at work. The Office referred appellant to Dr. Hanley, a Board-certified orthopedic surgeon, who diagnosed bilateral adhesive capsulitis to both shoulders. Dr. Hanley noted that appellant had diabetes mellitus and advised that the diagnosis was a known complication of that underlying condition. He concluded that appellant's condition was not related to the accepted traumatic incident.

The Office found a conflict in medical opinion between Dr. Lee, an attending physician, who attributed appellant's left shoulder condition to the accepted incident, and Dr. Hanley, for the government. It properly referred appellant to Dr. Maslow, a Board-certified orthopedic surgeon, for an impartial medical examination.<sup>7</sup>

Dr. Maslow provided a thorough report in which he reviewed a history of the February 21, 2004 incident and the medical treatment records. He reported findings on examination of the cervical spine and both shoulder girdles, noting that compression was negative for radicular signs or symptoms. There was no atrophy, muscle spasm or droop and both shoulders revealed a restricted range of motion. Strength testing and neurological examination were reported as normal with reflexes intact. Dr. Maslow reviewed the November 11, 2004 diagnostic study of the left shoulder that showed tendinosis in the supraspinatus with no frank cuff tear and some degenerative changes at the acromioclavicular joint. Diagnostic testing of the cervical spine revealed degenerative changes with a disc herniation at C3-4 and bulging at C4-5 and C6-7. He commented on the reports of Dr. Lee and Dr. Hanley. Dr. Maslow found that appellant sustained a contusion of the left shoulder in the February 21, 2004 incident with a cervical strain and radiculopathy. He advised, however, that the degenerative changes seen on testing were not related to the accepted incident. Dr. Maslow found that, as of the date of his examination, appellant had no objective residuals on ongoing cervical radiculopathy and that the restricted shoulder motion and cuff tendinitis were not conditions related to the traumatic incident at work. He found that appellant had healed from the

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<sup>5</sup> 5 U.S.C. § 8123(a). See *Elsie L. Price*, 54 ECAB 734 (2003); *Raymond J. Brown*, 52 ECAB 192 (2001).

<sup>6</sup> See *Bernadine P. Taylor*, 54 ECAB 342 (2003); *Anna M. Delaney*, 53 ECAB 384 (2002).

<sup>7</sup> The record documents the selection of the impartial medical examiner, including bypass screens, the memorandum of referral to the specialist, the appointment schedule notification to Dr. Maslow and the form scheduling the appointment with the physician's office. *C.f.*, *A.R.*, 61 ECAB \_\_\_ (Docket No. 09-1566, issued June 2, 2010) where there was no such documentation.

injuries sustained on February 21, 2004 and required no further medical treatment. Appellant was not restricted from performing his regular work duties as a result of the injury.

Based on the report of the impartial specialist, the Office accepted appellant's claim of injury on February 21, 2004 for a left shoulder contusion and cervical sprain, both resolved. The Board finds that the report of Dr. Maslow was based on an accurate history of injury and medical treatment provided. Dr. Maslow reviewed the medical reports and diagnostic tests conducted after the employment incident and found that they established a contusion to the shoulder and cervical strain with radiculopathy. As of his examination of appellant, he reported that there were no signs of ongoing cervical radiculopathy and that the degenerative changes seen on diagnostic studies were not related to the incident at work. It is well established that, when a case is referred to an impartial specialist for the purpose of resolving a conflict, the opinion of the specialist will constitute the weight of medical opinion when based on a proper factual and medical background and sufficiently well rationalized.<sup>8</sup> The opinion of Dr. Maslow was well explained and the Office properly relied upon the impartial specialist to accept that appellant sustained injury on February 21, 2004.

On appeal, counsel contends that the opinion of Dr. Maslow was vague, speculative and incomplete and that weight should be given the report of the attending physician, Dr. Lee. As noted, the Board previously found that the reports of Dr. Lee were sufficient to require further development of the medical evidence. The Office subsequently referred appellant for examination by Dr. Hanley, who attributed appellant's left shoulder condition to his diabetes mellitus. This created a conflict in medical opinion necessitating referral to the impartial specialist.<sup>9</sup> Dr. Maslow concluded that appellant sustained a contusion to the left shoulder and cervical sprain with radiculopathy, but determined that these conditions had resolved and required no further medical treatment. Appellant's going complaints were attributed to underlying degenerative conditions that were found not causally related to the accepted incident.

Accordingly, the Board finds that the Office properly gave special weight to the opinion of Dr. Maslow, the impartial medical examiner. The Office met its burden of proof to find that appellant did not have residuals of the February 21, 2004 injury.

### CONCLUSION

The Board finds that the Office met its burden of proof to establish that appellant's accepted conditions resolved.

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<sup>8</sup> See *Phillip H. Conte*, 56 ECAB 213 (2004).

<sup>9</sup> Counsel noted a factual inaccuracy in Dr. Maslow's report. Dr. Maslow commented on an October 18, 2004 injury under another OWCP claim that actually occurred on October 15, 2004. That claim is not presently before the Board in this appeal and Dr. Maslow was requested to resolve the conflict on whether appellant sustained injury on February 21, 2004. The inaccurate citation of October 2004 dates is found harmless to the issue currently on appeal.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 14, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 25, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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