United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
and	)	**Docket No. 10-1025**
	)	**Issued: January 11, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Hickory, NC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 19, 2010 appellant filed a timely appeal of a January 19, 2010 decision of the Office of Workers' Compensation Programs terminating his compensation for wage-loss and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether the Office properly terminated appellant's compensation benefits effective January 19, 2010 on the grounds that he no longer had any residuals or disability causally related to his accepted September 4, 2006 injury.

FACTUAL HISTORY

On September 4, 2006 appellant, then a 36-year-old casual clerk, sustained an injury to his left leg and shoulder in the performance of duty when he was jammed by a forklift. The Office accepted the claim for left leg contusion; sprain of the left shoulder and upper arm; and

sprain of the left knee and leg. Appellant stopped work on the date of injury and was placed on the periodic rolls for temporary total disability.

Appellant was treated by Dr. Peter T. Hurley, a Board-certified orthopedic surgeon, who performed left shoulder arthroscopic surgery on February 19, 2008. On June 12, 2008 Dr. Hurley noted some pathology in the C5-6 region pursuant to a recent cervical magnetic resonance imaging (MRI) scan and opined that appellant's current complaints of pain were coming more from his neck than from his shoulder.

Dr. Hurley referred appellant to Dr. Russell Gilcrest, an osteopath. In a June 24, 2008 report, Dr. Gilcrest noted appellant's complaints of left shoulder and neck pain with radiation to the left posterior shoulder, lateral arm and radial forearm and radiation to the first and second digit. Appellant experienced symptoms since his September 4, 2006 employment injury. Examination revealed no significant tenderness in the cervical, thoracic or lumbar paraspinal musculature. Range of motion of all peripheral joints in the upper and lower extremities was within normal limits. Examination of all upper and lower joints demonstrated no evidence of effusion, pain on palpation or crepitus. Cervical range of motion was as follows: extension was to 15 degrees, flexion was to 35 degrees, right rotation was to 55 degrees, left rotation was to 60 degrees, right-side bending was to 10 degrees and left-side bending was to 10 degrees. An October 26, 2007 MRI scan of the cervical spine showed significant bilateral uncovertebral spondylosis at the C5-C6 level with resulting moderate to severe bilateral foraminal narrowing at the C5-C6 level. An August 30, 2007 MRI scan of the left upper extremity revealed a mild partial tear of the rotator cuff. Dr. Gilcrest diagnosed left C6 radiculitis; left C7 radiculitis and left shoulder rotator cuff tendinitis.

The Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. Harrison Latimer, a Board-certified orthopedic surgeon, for examination and an opinion on whether he had continuing residuals and/or disability related to the September 4, 2006 employment injury and whether his diagnosed C6-7 radiculitis and radicular shoulder pain was causally related to that injury. In an April 16, 2009 report, Dr. Latimer provided a history of injury and treatment. He reviewed the medical records and provided findings on examination, which revealed limited cervical flexion of only five degrees. Dr. Latimer noted that appellant appeared to move his head a little more freely during conversations, turning his head to rotate 15 degrees to the left and 80 degrees to the right. Extension was to 40 degrees; lateral bending was 10 degrees to the left and 30 degrees to the right. Appellant had full range of motion of the right shoulder and full passive motion of the left shoulder. Muscles were symmetric bilaterally, with no muscle wasting in the trapezius, inferspinatus, supraspinous, deltoid, biceps or triceps regions. There was no notable instability of the left shoulder and no numbness in the digits of the left hand.

The knee examination was essentially normal with full motion, no crepitations, normal patellofemoral tracking, normal Lachman's, normal anterior posterior drawer, normal varus and valgus stress. Dr. Latimer opined that appellant's accepted left shoulder sprain, contusion of the left leg and sprain of the left knee had fully resolved. He further opined that appellant's current condition was not related to the accepted factors, but rather was related to cervical radiculitis explained by the MRI scan showing severe bilateral foraminal stenosis at C5-C6; that his shoulder problems were always related to that entity; and that he had no significant rotator cuff

problem in the shoulder based on the findings arthroscopically by his operative surgeon. Dr. Latimer stated that appellant's knee findings were minimal and MRI scans showed no evidence of any resultant sustained residual injury. He opined that appellant had no medical restrictions as a result of his September 4, 2008 injury, as his cervical condition has not been accepted by the Office.

The Office asked Dr. Latimer to clarify his opinion as to whether appellant's cervical condition was causally related to his accepted injury. In a September 30, 2009 supplemental report, Dr. Latimer found that the diagnosed conditions of cervical radiculopathy and bilateral foraminal stenosis at C5-C6 were not related to the September 4, 2006 injury. He stated that appellant's significant bilateral uncovertebral spondylosis at C5-C6 with severe bilateral foraminal narrowing constituted degenerative changes, which were unrelated to his September 4, 2006 injury.

In an October 26, 2009 report, Dr. Hurley noted that appellant continued to experience left shoulder pain but had positive functional passive motion of the shoulder.

On November 14, 2009 the Office proposed to terminate appellant's compensation and medical benefits. Based on Dr. Latimer's reports, it found that appellant no longer had any disability or residuals related to the accepted September 4, 2006 injury. Appellant was afforded 30 days within which to submit any additional evidence.

Appellant submitted reports from Dr. Jeffrey A. Knapp, a Board-certified orthopedic surgeon. On November 13, 2009 Dr. Knapp reported appellant's complaints of having intermittent problems with left shoulder and left arm pain following a 2006 work injury, as well as radicular complaints into his hand and arm. On examination, appellant complained of pain in his neck and shoulder reproduced with Spurling's maneuver, as well as altered sensation in a C5 distribution to his thumb and index finger. Motor strength was normal. Cervical spine MRI scan from 2007 revealed uncovertebral joint hypertrophy and neuroforaminal narrowing at C5-6 secondary to spondylogenic disc disease. Dr. Knapp diagnosed cervical radiculopathy suspect secondary to neuroforaminal stenosis, spondylogenic disc disease C5-6. On December 21, 2009 Dr. Knapp reviewed the results of a December 10, 2009 MRI scan, which showed worsening disc disease, spondylogenic change asymmetric to the left causing nerve compression and some cord deformation, as well as milder changes at C4-5 and no significant nerve compression. He diagnosed spondylogenic disc disease at C5-6 with stenosis and radiculopathy. Appellant also submitted a report of a December 10, 2009 MRI scan of the cervical spine.[1]

[1] Appellant also submitted duplicates of medical reports previously submitted and reviewed by the Office.

By decision dated January 19, 2010, the Office finalized the termination of appellant's compensation benefits. It found that the weight of the evidence rested with the opinion of Dr. Latimer, the Office referral physician.[2]

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[3] The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.[4] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5]

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that an employee no longer has residuals of an employment-related condition which require further medical treatment.[6]

ANALYSIS

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits on the grounds that he no longer had residuals of his accepted employment injury.

Dr. Latimer, the Office's referral physician, reviewed various diagnostic and imaging studies and conducted his own physical examination on April 16, 2009. Based upon his examination and review of the record, he opined that appellant had no current objective residuals that were directly or indirectly attributable to his work injury. Dr. Latimer provided a documented and reasoned opinion attributing appellant's current cervical condition to cervical radiculitis and preexisting severe bilateral foraminal stenosis at C5-C6. He opined that appellant's accepted left shoulder sprain, contusion of the left leg and sprain of the left knee had fully resolved. In a September 30, 2009 supplemental report, Dr. Latimer opined that the diagnosed conditions of cervical radiculopathy and bilateral foraminal stenosis at C5-C6 was not related to the September 4, 2006 injury, explaining that appellant's significant bilateral

[2] The Board notes that appellant submitted additional evidence after the Office rendered its November 18, 2005 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

[3] *I.J.*, 59 ECAB 408 (2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

[4] *J.M.*, 58 ECAB 478 (2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

[5] *T.P.*, 58 ECAB 524 (2007); *Larry Warner*, 43 ECAB 1027 (1992).

[6] *Id. Furman G. Peake*, 41 ECAB 361, 364 (1990).

uncovertebral spondylosis at C5-C6 with severe bilateral foraminal narrowing constituted degenerative changes, which were unrelated to his September 4, 2006 injury. The Board finds that Dr. Latimer's medical report is comprehensive, well rationalized and based on an accurate factual and medical history.[7]

There is no other contemporaneous medical evidence establishing that appellant remained disabled or continued to experience residuals of his employment-related injury. On June 12, 2008 Dr. Hurley observed some pathology in the C5-6 region pursuant to a recent cervical MRI scan and opined that appellant's current complaints of pain were coming more from his neck than from his shoulder. On October 26, 2009 he noted that appellant continued to experience left shoulder pain but had positive functional passive motion of the shoulder. Dr. Hurley's reports do not contain an opinion as to the cause of appellant's shoulder condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[8]

On June 24, 2008 Dr. Gilcrest provided examination findings and diagnosed left C6 radiculitis; left C7 radiculitis and left shoulder rotator cuff tendinitis. As his report fails to provide an opinion as to the cause of appellant's diagnosed conditions, it is of diminished probative value. The Board notes that Dr. Gilcrest's report is dated more than a year prior to the Office's decision terminating benefits. Therefore, it is of limited probative value as to appellant's medical condition on that date.

On November 13, 2009 Dr. Knapp reported appellant's complaints of pain in his neck and shoulder, as well as altered sensation in a C5 distribution to his thumb and index finger. He provided examination findings and diagnosed cervical radiculopathy suspect secondary to neuroforaminal stenosis, spondylogenic disc disease C5-6. On December 21, 2010 Dr. Knapp reviewed the results of a December 10, 2009 MRI scan and diagnosed spondylogenic disc disease at C5-6 with stenosis and radiculopathy. As these reports do not contain any opinion as to the cause of appellant's diagnosed condition, they are of limited probative value and are insufficient to establish a causal relationship between his cervical condition and the September 4, 2006 injury.[9] Other medical evidence of record, such as MRI scan reports, which lacks an opinion on causal relationship, does not constitute probative medical evidence.

The Board finds that Dr. Latimer's well-rationalized medical opinion constitutes the weight of the medical evidence and establishes that appellant no longer has residuals from his September 4, 2006 employment injury. Accordingly, the Office properly terminated appellant's wage-loss compensation and medical benefits based on his opinion.

[7] *See K.E.*, 60 ECAB ___ (Docket No. 08-1461, issued December 17, 2008).

[8] *Michael E. Smith*, 50 ECAB 313 (1999).

[9] *Id.*

CONCLUSION

The Board finds that the Office properly terminate appellant's wage-loss and medical benefits, effective January 19, 2010, on the grounds that he had no residuals or disability related to his accepted September 4, 2006 injury.

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2011
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