



## **FACTUAL HISTORY**

On February 9, 2010 appellant, then a 55-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a left arm and head injury when she was getting out of a car to service a stop, slipped on the ice and fell on the curb. She sustained her injury, filed her claim, stopped work and notified her supervisor on the same date.

In a February 9, 2009 emergency room report, Dr. Brian Grantham, a treating physician, reported that appellant's radiology report showed no acute fracture or dislocation. He diagnosed left shoulder contusion noting that she slipped on ice and fell on her left shoulder.

In a March 1, 2010 medical report, Dr. Wesley Cox, Board-certified in public health, reported that appellant had a possible rotator cuff tear and recommended a magnetic resonance imaging (MRI) scan.

In a March 16, 2010 MRI scan report, Dr. Kevin Haney, Board-certified in family medicine, reported that appellant's left shoulder showed tendinopathy or a partial thickness tear of the distal supraspinatus tendon, possible mild impingement related to bony spur, a slightly medially displaced bicep tendon and a large glenohumeral joint effusion.

Appellant signed a March 4, 2010 offer of modified assignment from the employing establishment in which she answered telephones and filled out paperwork.

Duty status reports dated March 1 to April 21, 2010 were also submitted. Dr. Cox placed appellant on limited duty and diagnosed her with left shoulder pain noting that she slipped on ice and fell on her left arm. On March 24, 2010 he evaluated an MRI scan of appellant's left shoulder and diagnosed partial thickness rotator cuff tear, rotator cuff tendinitis with impingement, acromioclavicular (AC) joint degenerative joint disease (DJD) and adhesive capsulitis.

In an April 21, 2010 medical report, Dr. Cox diagnosed left subscapularis with partial thickness tear, adhesive capsulitis, and rotator cuff impingement and pain. He recommended appellant continue with her subacromial injections.

By decision dated May 19, 2010, the Office accepted appellant's claim for a left shoulder contusion.

By letter dated May 19, 2010, the Office informed appellant that her left shoulder contusion had been accepted, but that Dr. Cox had diagnosed additional left shoulder pain, left subscapularis with partial thickness tear, rotator cuff tendinitis with impingement, DJD of AC joint and adhesive capsulitis. It informed appellant that the other conditions could not be accepted as the medical evidence did not establish a causal relationship between these conditions and the February 9, 2010 injury. Appellant was given 30 days to submit additional evidence.

In a June 7, 2010 medical report, Dr. Cox reported that appellant was neurovascularly intact and diagnosed left adhesive capsulitis, left partial thickness, subscapularis tear and left shoulder impingement syndrome. In an attending physician's report (Form CA-20) of said same

date, he noted that appellant fell on ice on February 9, 2010 while at work and diagnosed pain and stiffness, recommending she continue to work for the time being.

By decision dated July 7, 2010, the Office denied appellant's claim for the additional left shoulder conditions because the medical evidence did not support causal relationship to the February 9, 2010 employment injury. It also terminated her medical benefits on the grounds that she no longer had any residuals or disability causally related to her accepted contusion. The Office specifically noted that no medical records after February 9, 2010 indicated that the left shoulder condition was still active and that contusions typically resolved in about two weeks.<sup>2</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>3</sup> To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>4</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not established that she sustained additional left shoulder conditions causally related to her accepted injury. The Office accepted that on February 9, 2010 appellant sustained a left shoulder contusion. Appellant contends that the Office should accept left shoulder pain, left subscapularis with partial thickness tear, rotator cuff

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<sup>2</sup> The Board notes that appellant submitted additional evidence after the Office rendered its July 7, 2010 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision and, therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. § 510.2(c)(1); *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).

<sup>3</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>4</sup> See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>5</sup> *James Mack*, 43 ECAB 321 (1991).

tendinitis with impingement, AC joint DJD and adhesive capsulitis. The medical evidence of record does not contain a reasoned medical opinion establishing the causal relationship between these shoulder conditions to the accepted injury.

In reports dated March 1 to June 7, 2010, Dr. Cox treated appellant for left shoulder pain reporting that appellant had fell on ice while at work on February 9, 2010. Upon physical examination and evaluation of x-rays and MRI scans of appellant's left shoulder, he diagnosed left shoulder pain, left subscapularis with partial thickness tear, rotator cuff tendinitis with impingement, AC joint DJD and adhesive capsulitis.

Dr. Cox did not address whether appellant's condition was work related or offer a rationalized opinion on the causal relationship between appellant's diagnosed condition and the February 9, 2010 employment incident.<sup>6</sup> While he generally noted that appellant fell on ice at work on February 9, 2010, he never stated how the employment incident caused or contributed to the shoulder problems he diagnosed. Though Dr. Cox diagnosed several conditions, none of his reports mentioned a work-related cause or aggravation of appellant's various shoulder problems. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>7</sup> Therefore, Dr. Cox's medical reports are insufficient to meet appellant's burden of proof.

In a March 16, 2010 MRI scan report, Dr. Haney reported that appellant's left shoulder showed tendinopathy of the distal supraspinatus tendon versus partial thickness, possible mild impingement related to bony spur, a slightly medially displaced bicep tendon and a large glenohumeral joint effusion. While he diagnosed appellant's left shoulder condition, he did not identify a cause and did not mention appellant's employment incident. Without medical reasoning explaining how appellant's February 9, 2010 employment injury caused the left shoulder condition, Dr. Haney's report is insufficient to meet her burden of proof.<sup>8</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>9</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>10</sup>

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<sup>6</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>7</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Stephen R. Edgar*, Docket No. 08-2214 (issued May 6, 2009).

<sup>8</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

<sup>9</sup> *Bernadine P. Taylor*, 54 ECAB 342 (2003).

<sup>10</sup> *Id.*

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>11</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>12</sup> Office procedures require notification prior to terminating all medical benefits.<sup>13</sup> The Board has held that the Office must follow its procedures and provide claimant notice and an opportunity to respond prior to the termination of compensation benefits.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The Office accepted that appellant sustained a left shoulder contusion on February 9, 2010 and authorized medical care. By decision dated July 7, 2010, it terminated appellant's medical benefits on the grounds that the accepted left shoulder contusion ceased without residuals. The Board finds that the Office failed to meet its burden of proof in terminating appellant's medical benefits.

Under the Office's procedures, a notice of proposed termination should have been sent to appellant allowing her 30 days to respond.<sup>15</sup> The Office sent a May 19, 2010 letter advising appellant that her claim was being accepted only for left shoulder contusion and she would need to submit additional medical evidence to establish a causal relationship between her employment injury and the other diagnosed left shoulder conditions. However, this letter did not notify that the Office contemplated termination of her medical benefits. It cannot be construed as a pretermination notice.<sup>16</sup>

Under Office procedure, notice is required before terminating medical benefits. Pretermination notice is not required when the physician indicates that further medical treatment is not necessary, when the physician indicates that treatment has ended or when the Office denies payment for a particular charge on an exception basis.<sup>17</sup> In its July 7, 2010 decision, the Office simply stated that appellant's injury was no longer active because left shoulder contusions typically resolve in two weeks. It did not meet any exception to the general requirement to provide notice. Appellant's physician never stated that medical treatment had ended or that further treatment was not necessary.

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<sup>11</sup> *Roger G. Payne*, 55 ECAB 535 (2004).

<sup>12</sup> *Pamela K. Guesford*, 53 ECAB 726 (2002).

<sup>13</sup> *Winton A. Miller*, 52 ECAB 405 (2001); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6b (March 1997).

<sup>14</sup> *Winton A. Miller*, *supra* note 13.

<sup>15</sup> Federal (FECA) Procedure Manual, *supra* note 13.

<sup>16</sup> *P.C.*, 111 LRP 1077 (ECAB 2010).

<sup>17</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6b (March 1997).

Therefore, since there is no evidence that the Office provided notice and an opportunity to respond prior to termination of appellant's medical benefits, the Office failed to meet its procedural obligation to appellant. The July 7, 2010 decision will be reversed in part regarding the termination of medical benefits.

**CONCLUSION**

The Board finds that appellant failed to establish that her claim should be expanded to include additional left shoulder conditions due to the February 9, 2010 employment injury. The Board further finds that the July 7, 2010 termination decision was improper as the Office failed to provide notice of the proposed termination.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 7, 2010 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part.

Issued: May 19, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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