

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ARNITRUS SIMMONS and DEPARTMENT OF THE ARMY,  
PERSONNEL CENTER, St. Louis, MO

*Docket No. 98-226; Submitted on the Record;  
Issued February 17, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the residuals of appellant's February 25, 1993 employment injury resolved by December 14, 1995.

The Office of Workers' Compensation Programs, after initially rejecting appellant's claim, accepted that appellant's February 25, 1993 employment injury, in which she slipped on snow and ice on the steps of a bus and struck her right arm and shoulder on the steps, resulted in inflammation of her right rotator cuff. Appellant received continuation of pay from February 26 until March 2, 1993, when she returned to her regular duties as a personnel clerk.

By decision dated August 8, 1995, an Office hearing representative found that appellant was also entitled to compensation for time missed from work to undergo physical therapy from November 12 to December 7, 1993 for the effects of the employment injury. This decision also found that the record failed to reflect any evidence that residuals of appellant's employment injury had ceased and directed the Office to refer appellant for a second opinion evaluation to determine the extent, degree and duration of the residuals of the employment injury.

On September 12, 1995 the Office referred appellant, her medical records and a statement of accepted facts to Dr. Michael Chabot, an osteopath, for an evaluation of her right shoulder condition and its relationship to her February 25, 1993 employment injury. In a report dated September 19, 1995, Dr. Chabot set forth appellant's history and findings on physical examination, reviewed the prior medical evidence, and diagnosed chronic rotator cuff tendinitis, bilateral acromioclavicular joint degenerative joint disease, and bilateral shoulder impingement syndrome, right greater than left. He then stated:

"In answering question (1) as to whether there are current findings which indicate that [appellant's] work-related right rotator cuff inflammation of February 25, 1993, is active, let me state it is evident based on the records submitted and the patient's history that her symptoms are related primarily to advanced degenerative

disease involving the acromioclavicular joint and impingement syndrome associated with degenerative spurring along the right acromion. These symptoms are chronic in nature and are expected to become inflamed, especially with overhead activity and lifting. The patient's right shoulder symptoms have been present since before 1990, and there is documentation in the records submitted for November 2, 1990, where the patient was complaining of right shoulder abductor muscle weakness and a probable rotator cuff injury that had improved on Motrin. It is my impression that the patient's current symptoms are not related to her work-related injury but are related to a chronic degenerative disorder.

"With regard to question (2), again it is my impression the patient's current symptoms are related to a chronic degenerative disorder and not to her injury she sustained on February 25, 1993. There is documentation to indicate she returned to work after [one and one half] weeks, and her symptoms had significantly improved with physical therapy and anti-inflammatory medication. Due to the advanced nature of the disease, which is bilateral but worse on the right, it is expected she will continue to have problems with the right shoulder until she undergoes subacromial decompression and distal clavicle resection.

"In conclusion, it is my impression the patient has recovered from the symptoms associated with her work-related injury on February 25, 1993. It is my opinion the patient will continue to have problems in her right and left shoulders associated with advanced degenerative disease involving the bilateral acromioclavicular joints and spurring along the distal clavicle and proximal acromion bilaterally. Also the patient has significantly advanced spurring involving the anteromedial acromion on the right, which is causing impingement syndrome, as are the spurs along the distal clavicle and proximal acromion. This is a mechanical problem associated with continued contact of these spurs with the rotator cuff tendon, resulting in recurrent inflammation. These symptoms are exacerbated with lifting and overhead activity. The symptoms are documented to have been present prior to the patient's injury on February 25, 1993."

In a report dated October 9, 1995, Dr. Chabot stated that a magnetic resonance imaging (MRI) scan of appellant's right shoulder done on September 29, 1995 revealed that she has "a complete rotator cuff tear laterally and has osteoarthritis of the acromioclavicular joint." Dr. Chabot stated, "Again, it is my impression that these changes are long term and degenerative in nature."

On November 13, 1995 the Office issued appellant a notice of proposed termination of compensation, on the basis that the weight of the medical evidence supported that she had recovered from the residuals of her employment injury of February 25, 1993. Appellant disagreed with the proposed termination of her compensation and submitted a report dated December 5, 1995 from Dr. Terry J. Weis, an osteopath. Dr. Weis set forth appellant's history, complaints and findings on examination. He diagnosed anterior shoulder impingement syndrome and stated:

“[Appellant] suffers from degenerative arthritis of the acromioclavicular joint of the right shoulder and had exacerbations of her symptoms secondary to the fall that occurred in February 1993. She has had good relief from her symptoms and has had reached her maximum degree of medical recovery.”

By decision dated December 14, 1995, the Office terminated appellant’s compensation effective that date on the basis that she had recovered from the residuals of her employment injury of February 25, 1993. Appellant requested a hearing before an Office hearing representative, which was held on October 23, 1996 and submitted a report dated December 9, 1995 from Dr. Carolyn Porter Small, a Board-certified internist, stating that appellant “has been followed in our office since October 19, 1987. Review of her records does not reveal any previous complaints of arm pain.”

By decision dated March 26, 1997, an Office hearing representative found that “the Office met its burden of proof to terminate compensation benefits, as the weight of the medical evidence establishes that the claimant has no continuing disability causally related to the February 25, 1993 employment injury.”

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>1</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 treatment.<sup>2</sup>

The Board finds that the Office has established that the residuals of appellant’s February 25, 1993 employment injury resolved by December 14, 1995.

Dr. Chabot, the osteopath to whom the Office referred appellant for a second opinion on her right shoulder condition and its relation to her employment injury, unequivocally concluded in a September 19, 1995 report that appellant had recovered from her February 25, 1993 employment injury and that her continuing symptoms were related to the advanced degenerative disease and spurring of the joints and bones of her right shoulder. Appellant contends that Dr. Chabot relied on an inaccurate history of a prior right shoulder problem, but medical records from October 5 and November 2, 1990 clearly reflect right shoulder symptoms including abductor weakness, a diagnosis of questionable or probable rotator cuff injury, and treatment with medication, with improvement noted in the second report. As Dr. Chabot’s report was based on an accurate history and contains rationale for the opinion expressed, it constitutes the weight of the medical evidence on the issue of whether the residuals of appellant’s February 25, 1993 employment injury was resolved. This report was sufficient to meet the Office’s burden of proof to terminate appellant’s compensation effective December 14, 1995.<sup>3</sup>

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<sup>1</sup> *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>2</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>3</sup> As noted by the Office hearing representative in an August 8, 1995 decision, appellant was not claiming compensation for disability, as she had returned to work and continued to work at her regular position. The

Appellant has submitted no medical evidence showing that she continued to have residuals of her February 25, 1993 employment injury after December 14, 1995. Dr. Weis' December 5, 1995 report stated that appellant "had exacerbations of her symptoms secondary to the fall that occurred in February 1993" but did not indicate that these exacerbations had continued to the time of his December 5, 1995 report. This report is similar to an October 14, 1993 report which indicated that appellant's impingement syndrome of the right shoulder was "probably [a] preexisting process which was exacerbated," but did not indicate the period of the exacerbation. Dr. Chabot's medical report is the only one which addresses the period of residuals of appellant's employment injury and he concluded that these residuals had resolved by the time of his examination of appellant on September 19, 1995.

The decision of the Office of Workers' Compensation Programs dated March 26, 1997 is affirmed.

Dated, Washington, D.C.  
February 17, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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termination of her compensation terminated her entitlement to medical treatment at the expense of the Office.