

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VINCENT CIPRIANO and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

*Docket No. 99-1689; Submitted on the Record;
Issued February 25, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's benefits effective February 3, 1997.

The Office accepted appellant's claim for dislocation of the shoulder and right carpal tunnel syndrome. He underwent a right carpal tunnel release and right shoulder arthroscopy or acromioplasty on November 30, 1995. Appellant has not worked since his May 24, 1995 employment injury. The Office paid appellant compensation benefits.

On November 4, 1996 Dr. Steven C. Mirabello, a Board-certified orthopedic surgeon and appellant's treating physician, noted that appellant had a new complaint of severe right shoulder pain from doing weights. He opined that appellant had inflammation of his scapular stabilizer and pec major muscles but his pain might be coming from the cervical spine causing spasm.

On November 19, 1996 Dr. Mirabello stated that it was "very difficult to decipher" whether appellant's pain was cervical or shoulder related but he felt it might be shoulder pain secondary to cervical arthritis.

In his report dated November 25, 1996, Dr. Mirabello considered appellant's history of injury and opined that appellant's neck problem was related "to almost a whiplash-type syndrome where he [might] have had a preexisting cervical arthritis but developed a trauma to his muscles and his neck and is having chronic pain."

In a report dated November 26, 1996, Dr. Frank K. Kriz, a Board-certified orthopedic surgeon and a referral physician, considered appellant's history of injury and medical history but noted that the medical records and x-rays from Edward White Hospital that would document an actual dislocation were not present. He stated that a "dislocation would be very unusual in this patient with no previous history of recurrent dislocation of the shoulder." Dr. Kriz reviewed x-rays dated May 24 and December 1, 1995 and November 4, 1996. He diagnosed alleged

dislocation of right shoulder, postoperative status of Mumford arthroplasty of the right shoulder for impingement syndrome and postoperative right carpal tunnel release from the November 30, 1995 surgery. Dr. Kriz also diagnosed degenerative disc disease for the cervical spine with no evidence of neuropathy by electromyogram (EMG) or herniation by magnetic resonance imaging scan. He stated that appellant's subjective complaints and responses were not supported by objective physical findings. Dr. Kriz stated:

“[Appellant had] degenerative changes within the glenohumeral joint which predate this accident and may have experienced acute pain with a sprain of the shoulder which was superimposed on the degenerative changes causing acute symptoms on the day of injury. From an orthopaedic standpoint, it is most difficult to conceive that an actual dislocation of the right shoulder occurred without documenting x-ray studies.”

Dr. Kriz concluded that there did not seem to be any residuals from the May 24, 1995 employment injury. He stated that it would be difficult to support that appellant had any driving restriction. Dr. Kriz stated that the lack of atrophy in the right shoulder and upper extremity musculature confirmed and documented that he was using the right upper extremity in full use with activities of daily living which would include driving. He stated that no further treatment was necessary except ice pack application and rehabilitative strengthening and a stretching exercise program. Dr. Kriz stated that appellant's lifting 70-pound mail sacks might be a problem due to the preexisting degenerative arthritic changes involving the right shoulder. He stated that appellant should be able to return to full-time light duty following the rehabilitation exercise program.

By decision dated February 3, 1997, the Office terminated appellant's compensation finding that Dr. Kriz's opinion constituted the weight of the evidence.

On July 22, 1997 appellant requested an oral hearing before an Office hearing representative which was held on October 22, 1997. At the hearing, appellant testified that the condition of his neck and shoulder did not improve after surgery and his condition had been the same since the May 24, 1995 employment injury. He also testified that Dr. Kriz did not examine him but only spoke to him and had him walk on his toes or on his heel. Appellant denied that he ever told the doctor that he hurt himself lifting weights and in fact stated that he hurt himself to the point where he could not breathe, sweeping with a broom.

Appellant also submitted additional medical reports. In a report dated September 6, 1997, Dr. June McMillin, an emergency medicine specialist, considered appellant's history of injury, performed a physical examination and reviewed x-rays. She diagnosed a dislocated shoulder with a neuralgia secondary to the dislocation. Dr. McMillin stated that appellant's right arm and shoulder pain were caused by his dislocation and resolved after his shoulder was relocated but his neck pain did not resolve after shoulder relocation. She placed appellant on pain medication because she felt his neck pain was of musculoskeletal etiology.

In his report dated August 21, 1997, Dr. Robert A. Young, a Board-certified internist with a specialty in nephrology, opined that appellant suffered from hypertension, arteriosclerotic

heart disease, coronary artery disease and other heart problems which rendered him totally disabled.

In a report dated September 8, 1997, Dr. Enrique Y. Galura, a Board-certified psychiatrist and neurologist, opined that appellant suffered from a single episode of severe major depression.

By decision dated January 2, 1998, finalized on January 5, 1998, the Office hearing representative affirmed the Office's February 3, 1997 decision.

By letter dated August 31, 1998, appellant requested reconsideration of the Office's decision. He contended, *inter alia*, that Dr. Kriz's opinion should not be given weight because he did not physically examine appellant and did not have access to appellant's records from Edward White Hospital documenting that he suffered a shoulder dislocation.

In response to appellant's contention that Dr. Kriz's opinion was incomplete and not well rationalized, the Office referred appellant to Dr. Donald C. Sullivan, a Board-certified orthopedic surgeon, for a second opinion. In a report dated November 23, 1998, he considered appellant's history of injury, reviewed x-rays of the neck showing moderately advanced degenerative arthritis of his cervical spine and x-rays of the shoulder showing an inferior spur on the humeral head and the right humerus subluxed distally. Dr. Sullivan stated that appellant's findings were "unusual." He stated:

"appellant had a sensory deprivation pattern that does not follow an anatomical pattern and is consistent with a hysterical type of pattern. His degenerative arthritis involving the right neck apparently preexisted his injury at work and in any case, would not be caused by the injury at work."

Dr. Sullivan stated that appellant had no particular residual pattern which was likely to be the result of his injury at work. He stated that appellant's present loss of use of the arm was more consistent with an emotional disorder than it was with a physical disorder. Dr. Sullivan opined that appellant did not require additional treatment and could return to work full time without restrictions.

In a report dated June 17, 1998, Dr. Joseph M. Sena, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination and reviewed x-rays of the cervical spine showing degenerative changes at the C5-6 level with disc space narrowing and osteophyte formation and x-rays of the right shoulder showing postsurgical changes and degenerative changes at the glenohumeral joint with osteophyte formation about the glenohumeral joint. He opined that appellant had residual supraspinatus tendinitis of the right shoulder with positive impingement testing and pain with motion of the right shoulder including pain with abduction and internal rotation of the right shoulder. Dr. Sena diagnosed status postarthroscopic decompression of the right shoulder and degenerative joint disease of the glenohumeral joint. He stated that appellant continued to have residual complaints related to the May 24, 1995 employment injury including an unresolved cervical sprain/strain and chronic unresolved supraspinatus tendinitis.

By decision dated January 11, 1999, the Office denied appellant's request for modification.

The Board finds that the Office's January 11, 1999 decision requires modification.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on appellant's medical background.²

In the present case, in his November 26, 1996 report, Dr. Kriz opined that appellant had degenerative changes within the glenohumeral joint which predated the May 24, 1995 employment injury and appellant might have experienced acute pain with a shoulder sprain which was superimposed on the degenerative changes but he concluded that there were no residuals from the May 24, 1995 employment injury. He opined that appellant might have trouble lifting 70-pound sacks due to the preexisting degenerative arthritic changes involving the right shoulder but appellant should be able to return to full-time light duty following a rehabilitation exercise program. Dr. Kriz found no objective evidence to support appellant's complaints of pain.³ His opinion, however, is incomplete since he admitted that he did not have the Edward White Hospital records and x-rays documenting that appellant had a dislocated shoulder which was one of the accepted injuries.⁴ Dr. Kriz's opinion is therefore of diminished probative value and did not support the Office's termination of benefits on February 3, 1997.

Subsequent to Office's termination of benefits on February 3, 1997, appellant requested a hearing which was held on October 22, 1997 and on January 5, 1998, the Office hearing representative affirmed the Office's February 3, 1997 decision. In response to appellant's request for reconsideration of the Office hearing representative's January 5, 1998 decision, the Office referred appellant to Dr. Sullivan who, in his November 23, 1998 report, opined that appellant could return to work full time without restrictions. He reviewed the neck x-rays showing moderately advanced degenerative arthritis of the cervical spine and the shoulder x-rays showing an inferior spur on the humeral head and the right humerus subluxed distally. Dr. Sullivan opined that appellant's symptoms were unusual and that his sensory pattern was more consistent with a hysterical type of pattern than an anatomical pattern. He opined that appellant's degenerative arthritis involving the right neck "apparently" preexisted the injury at work and was not caused by the injury at work.

¹ *Patricia M. Mitchell*, 48 ECAB 371 (1987); *Patricia A. Keller*, 45 ECAB 278 (1993).

² *Larry Warner*, 43 ECAB 1027 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

³ It appears that contrary to appellant's assertion at the hearing that Dr. Kriz did not conduct a physical examination; Dr. Kriz's report indicates that he measured the range of motion of appellant's upper extremities, his shoulders and examined his thoracic and cervical spine.

⁴ *See Eric E. Brickers*, 45 ECAB 686, 695 (1994).

Appellant submitted Dr. Sena's June 17, 1998 report in which he diagnosed an unresolved cervical sprain/strain and chronic unresolved supraspinatus tendinitis. Dr. Sena opined that these conditions were related to the May 24, 1995 employment injury. He, however, did not provide a rationalized medical opinion explaining how the diagnosed conditions resulted from the May 1995 employment injury. Further, since the accepted conditions were for dislocation of the right shoulder and carpal tunnel syndrome, Dr. Sena particularly needed to explain how the conditions he diagnosed resulted from appellant's federal employment. The Board has held that a medical report not containing a medical rationale is of little probative value.⁵

Moreover, in his November 4, 19 and 25, 1996 reports, in which he stated, *inter alia*, that appellant had a whiplash-type syndrome, Dr. Mirabello did not provide a medical rationale explaining how appellant's ongoing neck and shoulder pain were related to the May 23, 1995 employment injury and therefore are not probative.⁶ Dr. McMillin's September 6, 1997 report is not probative because she stated that appellant's shoulder pain had resolved after relocation but she did not relate appellant's neck pain to his federal employment. Drs. Young and Galura did not address causation regarding appellant's shoulder and neck conditions in their reports dated August 21 and September 8, 1997, respectively. Therefore, their opinions are not probative.

The Board finds that Dr. Sullivan's opinion that appellant could return to work full time without restrictions is complete and sufficiently well rationalized to constitute the weight of the evidence. His November 23, 1998 report supports that appellant did not have any employment-related disability as of that date. The Office's decision to terminate benefits will be modified to find that appellant's disability ceased by November 23, 1998 the date of Dr. Sullivan's report.

⁵ See *Carolyn F. Allen*, 47 ECAB 240, 246 (1995).

⁶ *Id.*

The decision of the Office of Workers' Compensation Programs dated January 11, 1999 is hereby affirmed, as modified to reflect appellant's entitlement to compensation to November 23, 1998.

Dated, Washington, D.C.
February 25, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member