U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRI L. SHUMAN and U.S. POSTAL SERVICE,
SUNNYVALE MAIN POST OFFICE, Sunnyvale, CA

Docket No. 99-1078; Submitted on the Record;
Issued January 25, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation.

On September 14, 1994 appellant, then a 26-year-old letter carrier, developed pain in her left shoulder and back while carrying a heavy mailbag. She stopped working on September 16, 1994 and received continuation of pay for the period September 16 through October 31, 1994.

The Office accepted appellant's claim for lumbosacral strain, left trapezius strain and left impingement syndrome and began payment of temporary total disability effective November 1, 1994.

On July 10, 1995 appellant underwent surgery for a subacromial decompression of the left shoulder with debridement of the biceps and superior labrum.

In a December 18, 1997 decision, the Office terminated appellant's compensation on the grounds that there was no continuing disability or impairment causally related to her September 14, 1994 employment injury.

In a January 14, 1998 letter, appellant requested a hearing before an Office hearing representative, which was held on August 27, 1998. In a November 10, 1998 decision, the Office hearing representative affirmed the Office's December 18, 1997 decision.

In an undated letter, received by the Office on January 5, 1999, appellant requested reconsideration. In a January 7, 1999 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was immaterial and, therefore, insufficient to warrant review of the prior decisions.

The Board finds that the Office met its burden of proof in terminating appellant's compensation.

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 disability has ceased or that it is no longer related to the employment.[1]

In a January 12, 1995 report, Dr. Malvin Barer, a Board-certified orthopedic surgeon, stated appellant complained of tenderness in the left paracervical and trapezius musculature. He noted a trigger point discomfort over the left trapezius. Dr. Barer found limited motion in the left shoulder with tenderness in the subacromial space to abduction. He indicated that an arthrogram did not show a rotator cuff tear.

The Office referred appellant to Dr. Allan Halden, a Board-certified orthopedic surgeon, for an examination and second opinion. In a May 1, 1995 letter, he indicated that appellant had subjective factors of daily aching to sharp pain in the left shoulder, brought on or aggravated by lifting motion of the shoulder and most activities of daily living such as dressing, washing her hair or light housekeeping. Dr. Halden noted diffuse tenderness of the left shoulder, anterior, lateral, superior and posterior. He reported that appellant had objective findings of decreased range of motion of the shoulder and positive impingement test. Dr. Halden indicated that it was appropriate to find appellant totally disabled because the employing establishment reportedly did not have any position she could perform. He commented that, while appellant could perform light duty in a suitable position, she should be kept off work until after her surgery and after her physician indicated that she could return to work.

In a series of progress reports, Dr. Michael Krinsky, a Board-certified orthopedic surgeon, indicated that appellant was showing slow improvement from her surgery. The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Howard Sturtz, a Board-certified orthopedic surgeon, for an examination and second opinion. In a January 17, 1996 decision, Dr. Sturtz stated that appellant had never demonstrated any positive objective findings to support her complaints. He concluded that the mechanism of injury and the physical findings were not consistent with any significant injury in the shoulder, particularly a rotator cuff injury or an impingement. Dr. Sturtz commented that, theoretically, impingement might have occurred but appellant's lack of improvement for such a length of time was inconsistent with such a diagnosis. He stated that appellant's continuing complaints were not of an organic nature attributable to physical injury. In response to an Office questions, Dr. Sturtz indicated that appellant might have a rotator cuff impingement injury as a result of the September 14, 1994 employment injury. He added, however, that there were no objective factors of disability other than her healed operative scars. Dr. Sturtz stated that appellant's subjective complaints were not corroborated by objective physical findings. He indicated that, if appellant truly had a rotator cuff impingement syndrome, recovery from the surgery would have taken approximately 12 weeks.

In a March 5, 1996 report, Dr. Krinsky indicated that appellant had an area of exquisite tenderness in the posterior shoulder over the trapezius muscle. He commented that he remained

[1] *Jason C. Armstrong*, 40 ECAB 907 (1989).

puzzled why appellant's progress was not more rapid. Dr. Krinsky noted that an x-ray showed some mild overhanging of the acromion process and indicated that impingement could still be part of appellant's problem.

Dr. Krinsky referred appellant to Dr. William L. Green, a Board-certified orthopedic surgeon, who, in an April 2, 1996 report, diagnosed rotator cuff tear by history from appellant, adhesive capsulitis of the left shoulder, either secondary to the initial injury or associated with postoperative stiffness and global pin of the left shoulder of undetermined etiology. Dr. Green stated that there appeared to be an anterior beaking of the acromion, which could be associated with an impingement syndrome. He noted that appellant's subjective complaints were totally out of proportion to any objective findings on x-ray or on clinical examination. Dr. Green commented that, based on appellant's current subjective complaints, she would not be able to return to work in her current condition. He stated that objective findings were of an adhesive capsulitis with restriction of motion. Dr. Green indicated that adhesive capsulitis did not have the severe global pain that appellant subjectively complained. He also noted that appellant did not have muscle atrophy, therefore, her pain was not coming from the brachial plexus.

To resolve the conflict in the medical evidence, the Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Charles Ruth, a Board-certified orthopedic surgeon. In a July 22, 1996 report, Dr. Ruth indicated that appellant had a history of an impingement syndrome but noted that a functional component must be ruled out by a psychiatric evaluation. He reported that no preexisting conditions were found. Dr. Ruth stated that an anatomic relationship of the beaking of the acromion and down sloping was more prone to having impingement syndrome with strains on the shoulder. He concluded that appellant's complaints followed the September 14, 1994 employment injury, indicating that appellant's reaction from the injury had kept her from working. Dr. Ruth submitted a July 15, 1996 magnetic resonance imaging (MRI) scan report from Dr. Susan K. Stevens and Dr. Peter A. Rothschild, Board-certified radiologists, who stated that the scan showed lateral down sloping of the distal acromion and a Type III distal anterior acromion process. The radiologists stated that these findings could be seen with impingement. They found no evidence of a rotator cuff tear.

In a September 3, 1996 report, Dr. Ruth stated that the findings of the anatomical relationship of the beaking of the acromion and the down sloping gave more of a chance of having impingement syndrome with abduction of the shoulder at approximately 70 to 100 degrees of abduction. He indicated that he was unable to elicit objective residuals from the accepted conditions of lumbosacral strain and trapezius strain. Dr. Ruth stated that appellant demonstrated extreme pain over the top of the shoulder in a nonanatomic area. He expressed uncertainty on whether all of appellant's complaints were purely orthopedically caused. Dr. Ruth commented that the length of unresolved problems with physical therapy was one more reason to suspect a functional component to appellant's condition. He stated that, if it were just a matter of time on physiotherapy, appellant would have healed long ago as she had undergone lengthy treatment. Dr. Ruth indicated that, as long as appellant complained of pain and the inability to lift and move the arm, he was unaware of any position that allowed working with the left arm completely tied up. He noted that, at the time, appellant appeared to be overguarding and not moving the shoulder as much as it could be done. Dr. Ruth reported that there was some nonanatomic numbness so there was no nerve pinching and no atrophy of the left arm or

shoulder, which led him to believe that appellant's pain was not present constantly and had not limited her usage.

The Office referred appellant to Dr. Morey A. Weingarten, a psychiatrist, for a psychiatric examination as recommended by Dr. Ruth. In an October 14, 1996 report, Dr. Weingarten stated that appellant's response to the employment injury and extended disability was not untoward and, in and of itself, was not indicative of a psychiatric problem. He commented that the lack of response to physical therapy did not indicate a psychiatric basis nor did many of the findings reported by Dr. Ruth. Dr. Weingarten suggested that these findings might represent other pathological entities outside of the scope of his examination. He concluded that there was not sufficient evidence to render a diagnosis of a psychiatric disorder or a psychogenic basis to appellant's problems. Dr. Weingarten stated that appellant's responses were not outside the norm and did not necessarily reflect a psychologic problem.

The Office referred appellant back to Dr. Ruth for further examination and an opinion on whether her condition remained causally related to the employment injury. In an October 15, 1997 report, Dr. Ruth stated that he was unable to find organic, objectively supported orthopedic findings of appellant's orthopedic injury. He commented that appellant was exaggerating extremely on the pain in her arm without showing evidence of atrophy. Dr. Ruth noted that all of appellant's testing and motion was limited by complaints of injury. He stated that the extreme hypersensitivity on the left arm without associated atrophy and without any objective findings of cause of the pain left the discussion to treating something that came on after the employment injury. Dr. Ruth declared that these complaints were not usual or normal. He indicated that appellant was unable to use her left arm as long as she felt she experienced severe pain in the arm. Dr. Ruth concluded that appellant's disability was not really orthopedic.

In situations where there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[2] Dr. Ruth, acting as an impartial medical specialist, provided a well-rationalized report indicating that he could not find any objective basis for appellant's continued complaints of pain after an extensive examination. His report is entitled to special weight and, in the context of this case, constitutes the weight of the medical evidence. Dr. Ruth's report established that appellant had no objective evidence of a shoulder condition and, therefore, was no longer entitled to compensation. Dr. Ruth's report, therefore, established the Office's burden of proof in terminating her compensation.

[2] *James P. Roberts*, 31 ECAB 1010 (1980).

The decisions of the Office of Workers' Compensation Programs dated January 7, 1999 and November 10, 1998 are hereby affirmed.

Dated, Washington, DC
January 25, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member