

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLAUDE E. FIELDS and DEPARTMENT OF THE NAVY,
NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 00-1556; Submitted on the Record;
Issued January 16, 2002*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective May 23, 1999; (2) whether appellant had any disability after May 23, 1999 causally related to his employment injury; and (3) whether the Office properly refused to reopen appellant's case for further consideration of the merits, pursuant to 5 U.S.C. § 8128(a).

On April 8, 1986 appellant, then a 41-year-old electronic helper, sustained an employment-related left shoulder strain and bicipital tendinitis. He stopped work on April 10, 1986. On November 4, 1997 the Office referred appellant to Dr. Kevin A. Mansmann, a Board-certified orthopedic surgeon, for a second opinion evaluation. Finding that a conflict existed between the opinions of Drs. Mansmann and Corey K. Ruth, appellant's treating orthopedic surgeon, on January 26, 1999, the Office referred him to Dr. Frank A. Mattei, a Board-certified orthopedic surgeon, to resolve the conflict.¹

By letter dated April 2, 1999, the Office informed appellant that it proposed to terminate his compensation, based on the opinion of Dr. Mattei. Appellant disagreed with the proposed termination and submitted additional reports from Dr. Ruth. By decision dated May 12, 1999, the Office terminated appellant's compensation, effective May 23, 1999, on the grounds that his work-related disability had ceased.

On June 7, 1999 appellant requested reconsideration and submitted additional medical evidence. In a September 8, 1999 decision, the Office denied modification of its prior decision. On October 12, 1999 appellant again requested reconsideration and submitted additional medical evidence. By decision dated January 11, 2000, the Office denied appellant's reconsideration request on the grounds that the evidence submitted was cumulative and repetitious. He again

¹ Both Drs. Mansmann and Mattei were provided with the medical record, a statement of accepted facts and a set of questions.

requested reconsideration on January 26, 2000 and submitted medical evidence. In a decision dated March 6, 2000, the Office denied his reconsideration request, finding the evidence submitted repetitious. The instant appeal follows.

Initially, the Board finds that the Office met its burden of proof to terminate appellant's compensation.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.² Furthermore, in situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.³

The medical evidence relevant to the termination of appellant's compensation includes a number of reports in which his treating orthopedic surgeon, Dr. Ruth, diagnosed left shoulder bicipital tendinitis and impingement syndrome⁴ and continued to advise that appellant remained symptomatic and was disabled due to his employment-related condition. In a work restriction evaluation received by the Office on July 10, 1997, Dr. Ruth advised that appellant could work four hours per day with restrictions.

In a report dated November 24, 1997, Dr. Mansmann, who provided a second opinion for the Office, diagnosed left shoulder sprain and strain and bicipital tendinitis by history, resolved. He advised:

"There were no objective findings on today's clinical examination of [appellant's] left shoulder. He had symmetrical ranges of motion, good muscle strength and negative impingement tests. Based on today's examination, I feel [that he] has fully recovered from his apparent left shoulder injuries. No further medical treatment is needed in relation to same. Regarding work, I feel [he is] capable of working in a position involving no lifting of greater than thirty pounds. However, this limitation is due to conditions unrelated to his left shoulder."

In an attached work capacity evaluation, Dr. Mansmann reiterated his opinion that appellant could work eight hours a day with restrictions that were unrelated to his employment injury.

In a comprehensive report dated March 1, 1999, Dr. Frank A. Mattei, who is Board-certified in orthopedic surgery and provided an independent medical evaluation for the Office,

² See *Patricia A. Keller*, 45 ECAB 278 (1993).

³ See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

⁴ Dr. Ruth also diagnosed bilateral carpal tunnel syndrome, left wrist volar ganglion and cervical strain and sprain, none of which were accepted by the Office as employment related.

diagnosed degenerative arthritis of the spinal column; degenerative changes of the shoulder joints, greater on the left; degenerative arthritic changes of the wrist joint, mostly affecting the left wrist joint; and gout by history. Dr. Mattei advised:

“After careful review of the above medical documentation, the history given by [appellant], and my objective orthopedic evaluation, it is my medical opinion that we are dealing with mostly degenerative arthritic changes of the cervical spine. As to his shoulder joints, I could not get a true tendinitis of the shoulder joints, but one more of degenerative changes, which may account for his complaints. As to a neurological evaluation, I could not elicit a true radiculopathy of the upper or lower extremities with negative findings at the wrist joint for a carpal tunnel syndrome [and] I do not feel that he is suffering from this condition.

It is my medical opinion, with a reasonable degree of medical certainty, [that he] has made an excellent recovery from any injuries he may have sustained in 1983, 1985 and 1986 as the records state; however, [he] has had a heart attack and he also suffers from gouty arthritis which resulted in the arthritic changes in his wrist joints. This is not the result of his accident which he describes.

I cannot establish a true diagnosis that may be the result of any injury, for all the findings reveal that [appellant] has preexisting conditions and degenerative arthritis and findings of a heart attack and gouty arthritis. He does suffer from angina and hypertension. [Appellant’s] medical condition is not a result of his work injury by direct cause, aggravation, description or acceleration.

At the present time, it is my medical opinion, there are no resultant factors such as carpal tunnel syndrome or radiculopathy as described as a result of his accidents. He does have degenerative changes in his cervical spine which would precipitate this condition upon activity.”

In an attached work capacity evaluation, Dr. Mattei advised that appellant could work eight hours a day.

Dr. Mattei provided a comprehensive report in which he advised that appellant had no disabling residuals of the employment injury. While appellant submitted additional reports from Dr. Ruth,⁵ the Board finds that these reports in which Dr. Ruth essentially repeats his earlier findings and conclusions, are insufficient to overcome the weight accorded to Dr. Mattei, the impartial medical examiner, as Dr. Ruth had been on one side of the conflict in the medical opinion that the impartial medical examiner resolved.⁶ As these reports are insufficient to overcome the special weight accorded Dr. Mattei⁷ who found that appellant’s employment-

⁵ Appellant also submitted a magnetic resonance imaging (MRI) scan of the left shoulder dated May 22, 1999 which revealed a small intrasubstance tear of the supraspinatus tendon. The Board notes that this condition has not been accepted as employment related; *see* discussion *infra*.

⁶ *See Thomas Bauer*, 46 ECAB 257 (1994).

⁷ *See Harrison Combs, Jr.*, 45 ECAB 716 (1994).

related disability had ceased, the Office met its burden of proof to terminate his compensation benefits effective May 23, 1999.

The Board further finds that appellant failed to establish that he had an employment-related disability after May 23, 1999.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to him to establish that he had disability causally related to his accepted injury.⁸ To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁹ Causal relationship is a medical issue¹⁰ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.¹¹

The evidence relevant to continuing disability includes an MRI scan of the left shoulder performed on May 22, 1999 and submitted to the Office on June 9, 1999 which demonstrated a small intrasubstance tear of the supraspinatus tendon. In a report dated June 2, 1999, Dr. Ruth again diagnosed chronic left shoulder impingement syndrome. He noted the MRI scan findings and concluded, "based on [appellant's] MRI [scan], I feel he has a serious and permanent injury to his left shoulder which leaves him partially disabled."

While Dr. Ruth opined that appellant's MRI findings indicated that appellant had a permanent injury to his left shoulder, the Board finds this evidence insufficient to establish that the tear is employment related. Initially, the Board notes that this finding was made 13 years after appellant stopped work. Furthermore, Dr. Ruth provided no explanation to indicate that this finding was caused by appellant's April 8, 1986 employment injury. Appellant, therefore, failed to establish that he continued to be disabled after August 17, 1997.

Finally, the Board finds that the Office did not abuse its discretion in denying appellant's request for review.

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section

⁸ See *George Servetas*, 43 ECAB 424 (1992).

⁹ See 20 C.F.R. § 10.110(a); *Kathryn Haggerty*, *supra* note 3.

¹⁰ *Mary J. Briggs*, 37 ECAB 578 (1986).

¹¹ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

10.606(b)(2).¹² This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.¹³ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁴

In this case, with his October 12, 1999 and January 26, 2000 requests for reconsideration, appellant submitted evidence that was previously of record and had been reviewed by the Office in its earlier decisions. The Office, therefore, properly denied appellant's requests for reconsideration.

The decisions of the Office of Workers' Compensation Programs, dated March 6 and January 11, 2000 and September 8 and May 12, 1999, are hereby affirmed.

Dated, Washington, DC
January 16, 2002

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹² 20 C.F.R. § 10.608(a) (1999).

¹³ 20 C.F.R. § 10.608(b)(1) and (2) (1999).

¹⁴ 20 C.F.R. § 10.608(b) (1999).