

FACTUAL HISTORY

The Office accepted that on January 21, 2001 appellant, a 32-year-old mail handler, sustained a right shoulder strain while pulling a loaded postal container. She consulted several physicians through May 20, 2001 for right shoulder and neck pain.¹ In an April 19, 2001 report, Dr. Sajib Pervaiz, an employing establishment physician, diagnosed a possible right rotator cuff tear. In a May 3, 2001 report, Dr. Robert J. Kolasky, a consulting physician for the employing establishment, diagnosed “chronic right upper extremity pain possibly related to C4-5 instability ... aggravated by the pulling and heavy lifting in the workplace.”

The Office also accepted that on June 1, 2001, while on light duty, appellant sustained a cervical strain while lifting bundles of mail.² Following emergency room treatment, appellant was released to light duty. In a June 29, 2001 report, Dr. Douglas M. Ehler, an attending physician, found mild bilateral foraminal stenosis at C4-5 and possibly at C6-7 on the right. In a September 14, 2001 note, Dr. John N. Riester, an attending Board-certified orthopedic surgeon, diagnosed multidirectional instability of the right shoulder. He submitted periodic reports through March 2002 noting neck and right shoulder pain.³

On April 29, 2002 appellant filed a claim for a recurrence of disability (Form CA-2a) commencing April 23, 2002 while in light-duty status. She stopped work on April 24, 2002. Dr. Riester submitted periodic progress notes holding appellant off work as of April 26, 2002 due to neck and shoulder pain with multidirectional right shoulder instability.⁴

By decision dated September 4, 2002, the Office denied appellant’s claim for a recurrence of disability commencing April 23, 2002 on the grounds that she submitted insufficient medical evidence substantiating a change in the nature and extent of her work-related condition or in her light-duty job requirements.

In a September 10, 2002 letter, appellant requested an oral hearing. She submitted September 12 and 20, 2002 reports from Dr. Riester stating that the January 21 and June 1, 2001 injuries caused a herniated cervical disc and aggravated a preexisting multidirectional instability of the right shoulder with tendinitis and loose capsular ligaments.

¹ January 22, 2001 x-rays of the right shoulder were normal. April 10, 2001 electrodiagnostic studies and an April 16, 2001 magnetic resonance imaging (MRI) scan of the right upper extremity were normal. A May 20, 2001 MRI of the cervical spine showed mild degeneration at C5-6 with a mild disc bulge, without focal herniation or significant canal stenosis.

² The claim for the January 21, 2001 right shoulder strain was assigned Claim No. 09-2006074. The June 1, 2001 cervical strain was assigned Claim No. 09-2010276. On September 12, 2002 the Office doubled the two claims under master Claim No. 09-2010276.

³ A May 24, 2002 myelogram and computerized tomography (CT) scan showed a C5-6 disc herniation with leftward component, a ventral extradural deformity of the thecal sac at C5-6, with some deformity at C4-5 and C6-7.

⁴ Appellant participated in physical therapy from June to September 2002.

The Office referred appellant to Dr. Richard Watkins, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Watkins submitted an October 2, 2002 report finding no objective abnormalities of either upper extremity. He diagnosed cervical and right shoulder strains “caused or aggravated by the repetitive work activities of January 21 and June 1, 2001.” He opined that her C5-6 disc herniation and bilateral shoulder instability were not causally related to work factors. Dr. Watkins opined that appellant “did not need to stop work on April 24, 2002 due to the work-related conditions.” He recommended work restrictions but stated that appellant had reached maximum medical improvement and did not require ongoing medical treatment.

In reports from October 4, 2002 to January 7, 2003, Dr. Riester explained that the diagnoses of multidirectional shoulder instability and cervical disc herniation with foraminal stenosis were “not new” but a “better clarification of the original problem[s], which were listed as cervical and shoulder strain.” He found appellant disabled for work. In an April 17, 2003 report, Dr. Riester explained that appellant was disabled for work from April 23 to June 10, 2002 due to an exacerbation of her of neck and right shoulder symptoms “directly related to her original injury of January 21, 2001” and other work factors.⁵

By decision dated April 21, 2003 and finalized April 23, 2003, an Office hearing representative reversed, in part, the Office’s September 4, 2002 decision. The hearing representative authorized wage-loss compensation for the period April 23 to June 10, 2002. The hearing representative directed the Office to undertake further development to determine whether appellant had continuing disability after June 10, 2002 and whether she sustained a herniated C5-6 disc or foraminal stenosis in the performance of duty.

The Office found a conflict of medical opinion between Dr. Watkins, for the government, and Dr. Riester, for appellant. To resolve this conflict and to conduct the development directed by the Office hearing representative, the Office referred appellant, the medical record and a statement of accepted facts, to Dr. Dennis Glazer, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

In a July 9, 2003 report, Dr. Glazer reviewed a history of injury and medical treatment. On examination, he observed tenderness on palpation of the paracervical musculature and a normal, stable right shoulder. He obtained cervical and right shoulder x-rays which were normal. Dr. Glazer opined that the January 21 and June 1, 2001 injuries temporarily aggravated right shoulder and cervical strains for a period not exceeding three months and that there were no objective residuals of these injuries on examination. He noted work restrictions of a five-pound lifting limitation and no overhead lifting. Dr. Glazer limited reaching to 1 hour, pushing, pulling and lifting to 10 pounds, and recommended three 15-minute breaks a day. He explained in a July 22, 2003 supplemental report that the work restrictions recommended were only “preventive in nature” as if appellant were “exposed to full duty ... she will have additional accidents.” He commented that the small herniated disc was not clinically significant as there were no objective signs related to the disc and no indication of nerve root compression.

⁵ Dr. Riester submitted reports from April 29 to June 5, 2003 finding appellant totally disabled for work through August 12, 2003 due to right shoulder instability, neck pain and an aggravation of preexisting foraminal stenosis.

In July 24 and 28, 2003 reports, Dr. Riester found appellant had been “unable to work because of neck and right shoulder pain” and instability, aggravated by the accepted injuries. He released appellant to limited duty.

By decision dated August 1, 2003, the Office denied appellant’s claim for total disability from June 11, 2002 onward, finding that the accepted conditions had ceased and that her herniated cervical disc and shoulder instability were not causally related to the accepted injuries. The Office found that Dr. Glazer’s opinion was entitled to the weight of the medical evidence as he was an impartial medical examiner and had submitted a well-rationalized report.

By notice dated August 1, 2003, the Office advised appellant that it proposed to terminate her medical benefits based on the opinion of Dr. Glazer, who found no need for ongoing medical treatment.

In August 22 and 25, 2003 letters, appellant opposed the proposed termination of her medical benefits. She submitted an August 19, 2003 report from Dr. Mark R. Grubb, an attending Board-certified orthopedic surgeon, who provided a history of the January 1, 2001 injury and reviewed appellant’s duties of heavy lifting, pushing and pulling. He noted that she had been off work since April 24, 2002. On examination, Dr. Grubb found tenderness to palpation in the paracervical musculature and right scapular region, a restricted range of cervical motion and a positive Spurling’s maneuver. Dr. Grubb diagnosed right shoulder pain and a herniated nucleus pulposus without compression. He noted that appellant should avoid repetitive work as it “bother[ed] her.”

By decision dated September 3, 2003, the Office terminated appellant’s medical benefits, based on Dr. Glazer’s opinion as the weight of the medical evidence.

In a July 4, 2004 letter received on July 8, 2004, appellant requested reconsideration. She submitted progress notes and work restriction slips from Dr. Riester dated from September 11, 2003 to June 18, 2004.⁶ Dr. Riester observed intermittently restricted motion of the neck and shoulders. He diagnosed bilateral shoulder instability and a herniated cervical disc. He restricted appellant to light duty.

By decision dated July 20, 2004, the Office denied appellant’s request for reconsideration on the grounds that the July 8, 2004 request did not raise substantive legal questions or include new or relevant evidence addressing the critical issue of causal relationship. The Office found that Dr. Riester’s notes were not new, relevant evidence to support that the January 21 and June 1, 2001 injuries caused multidirectional instability of the right shoulder or a herniated cervical disc.

⁶ The dates of the progress notes are as follows: September 11 and November 6 and 13, 2003; January 29, March 11 and 16, May 19 and June 18, 2004. The dates of the work restriction forms are August 12 and September 11, 2003.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁷ Thus, after the Office determines that an employment-related injury or condition caused a period of disability for work, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability ceased or is no longer related to the employment injury.⁸

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability during the period subsequent to the date when compensation is terminated or modified.⁹ The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁰

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a recurrence of total disability from April 23 to June 10, 2002 causally related to an accepted January 1, 2001 right shoulder strain and June 1, 2001 cervical strain. The Office predicated its acceptance on the opinion of Dr. Riester, an attending Board-certified orthopedic surgeon. In an April 17, 2003 report, Dr. Riester explained that appellant was disabled for work from April 23 to June 10, 2002 due an exacerbation of work-related neck and right shoulder symptoms.

Appellant asserted that she remained totally disabled for work on and after June 11, 2002, in part due to cervical conditions and right shoulder instability that the Office did not accept as work related. Thus, the Office conducted additional medical development, referring her to Dr. Watkins, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Watkins submitted an October 2, 2002 report negating a causal relationship between appellant's condition on and after April 24, 2002 and the accepted injuries. Thus, the Office found a conflict of medical opinion between Dr. Riester, for appellant, and Dr. Watkins, for the government.

The Act, at 5 U.S.C. § 8123, states that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination. In accordance with 5 U.S.C. § 8123, to resolve the conflict, the Office obtained July 9 and 22, 2003 reports from Dr. Glazer, a Board-certified orthopedic surgeon appointed as impartial medical examiner. Dr. Glazer performed a thorough examination and found no objective residuals of the accepted January 1 and June 1, 2001 injuries. He provided rationale explaining that the accepted injuries caused

⁷ *Bernadine P. Taylor*, 54 ECAB ____ (Docket No. 02-263, issued January 15, 2003).

⁸ *Carl D. Johnson*, 46 ECAB 804 (1995).

⁹ *Raymond W. Behrens*, 50 ECAB 221 (1999).

¹⁰ *Id.*

only a temporary aggravation that should have ceased no more than three months from the date of injury. Also, Dr. Glazer noted that no further treatment was needed and any work restrictions were preventative in nature and not based on any objective findings.

The Board notes that when the Office refers a case to an impartial medical specialist for the purpose of resolving a conflict in medical opinion, the opinion of such specialist, if sufficiently well rationalized and based upon a proper medical and factual background, must be given special weight.¹¹ The Board finds that Dr. Glazer's opinion is entitled to special weight as it was well rationalized and based upon a complete and accurate factual and medical history as well as detailed clinical findings.¹²

After Dr. Glazer submitted his report, Dr. Riester provided additional progress notes and work restriction slips dated July 24 and 28, 2003, opining that work factors aggravated neck and right shoulder pain with instability, causing disability for work through August 12, 2003. The Board has held that an additional report from a claimant's physician, which essentially repeats earlier findings and conclusions, is insufficient to overcome the weight accorded to an impartial medical specialist's report.¹³ Dr. Riester was on one side of the conflict in medical opinion that gave rise to the impartial medical examination. Thus, Dr. Riester's additional reports are insufficient to overcome or create a new conflict with Dr. Glazer's well-rationalized opinion.

The weight of the medical evidence demonstrates that appellant had no continuing disability resulting from the accepted work injury on and after June 11, 2002. Thus, the Board finds that the Office has met its burden of proof in terminating compensation.¹⁴

LEGAL PRECEDENT -- ISSUE 2

As set forth above, once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹⁵ 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.¹⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹⁷ To terminate authorization for medical treatment, the

¹¹ *Roger G. Payne*, 55 ECAB ____ (Docket No. 03-1719, issued May 7, 2004); *Furman G. Peake*, 41 ECAB 361 (1990).

¹² *Roger G. Payne*, *supra* note 11.

¹³ *Michael Hughes*, 52 ECAB 387 (2001).

¹⁴ *Raymond W. Behrens*, *supra* note 9.

¹⁵ *Bernadine P. Taylor*, 54 ECAB ____ (Docket No. 02-263, issued January 15, 2003).

¹⁶ *Id.*

¹⁷ *Roger G. Payne*, *supra* note 11.

Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.¹⁸

ANALYSIS -- ISSUE 2

The Office accepted that appellant sustained a right shoulder strain on January 1, 2001 and a cervical strain on June 1, 2001. The Office also accepted a recurrence of total disability for the period April 23 to June 10, 2002. To treat the effects of these injuries, the Office approved treatment by Dr. Riester, an attending Board-certified orthopedic surgeon. He opined that appellant sustained a herniated cervical disc and right shoulder instability in the performance of duty. The Office referred appellant to Dr. Watkins, a Board-certified orthopedic surgeon, who submitted an October 2, 2002 report finding no objective abnormalities of the upper extremities. Dr. Watkins also stated that the herniated cervical disc and shoulder instability were unrelated to the accepted work injuries. The Office found a conflict of medical opinion between Dr. Riester, for appellant, and Dr. Watkins, for the government. As set forth above, Dr. Glazer's opinion as impartial medical examiner was entitled to special weight.¹⁹ Also as set forth above, Dr. Riester's progress notes and work restriction slips submitted after Dr. Glazer's report are insufficient to overcome the weight accorded the impartial medical specialist, both because Dr. Riester was on one side of the conflict resolved by Dr. Glazer and because the additional reports essentially repeat earlier findings and conclusions.²⁰

Appellant also submitted an August 19, 2003 report by Dr. Grubb, an attending Board-certified orthopedic surgeon. Dr. Grubb noted a history of injury and diagnosed a herniated cervical disc and right shoulder pain. However, he did not offer medical rationale explaining how and why these diagnoses were related to the accepted injuries or other work factors. In the absence of such rationale, Dr. Grubb's report is insufficient to outweigh or create a conflict with that of Dr. Glazer.²¹ Also, the Board notes that a diagnosis of "pain" in the absence of objective findings is not a basis for the payment of compensation.²²

Thus, the Board finds that Dr. Glazer's opinion was sufficient to meet the Office's burden of proof in terminating appellant's authorization for medical benefits effective September 3, 2003.

LEGAL PRECEDENT -- ISSUE 3

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal

¹⁸ *Pamela K. Guesford*, 53 ECAB 726 (2002).

¹⁹ *Roger G. Payne*, *supra* note 11.

²⁰ *Michael Hughes*, 52 ECAB 387 (2001).

²¹ *Daniel F. O'Donnell, Jr.*, 54 ECAB ____ (Docket No. 02-1468, issued February 28, 2003).

²² *John L. Clark*, 32 ECAB 1618 (1981).

argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.²³ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.²⁴

In support of his request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his burden of proof.²⁵ The appellant need only submit relevant, pertinent evidence not previously considered by the Office.²⁶ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.²⁷

ANALYSIS -- ISSUE 3

The Office terminated appellant's authorization for medical benefits by decision dated September 3, 2003, finding that the weight of the medical evidence established that all work-related conditions had ceased. Appellant requested reconsideration by letter dated July 4 2004. She submitted progress notes and work restriction slips from Dr. Riester dated from September 11, 2003 to June 18, 2004. These reports diagnose neck and right shoulder pain with a herniated cervical disc and bilateral shoulder instability. While these notes and slips constitute new evidence, they are repetitive of Dr. Riester's reports and slips previously of record. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening the case.²⁸ Also, these notes and slips do not contain any medical rationale addressing the relevant issue of causal relationship in this case. As such, they are irrelevant and thus insufficient to warrant a merit review of the case.²⁹

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation on and after June 11, 2002. The Board further finds that the Office met its burden of proof in terminating appellant's authorization for medical benefits effective September 3, 2003. The Board further finds that the Office properly denied merit review of

²³ 20 C.F.R. § 10.606(b)(2).

²⁴ 20 C.F.R. § 10.608(b).

²⁵ *Helen E. Taschantz*, 39 ECAB 1382 (1988).

²⁶ *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

²⁷ *Annette Louise*, 54 ECAB ____ (Docket No. 03-335, issued August 26, 2003).

²⁸ *Denis M. Dupor*, 51 ECAB 482 (2000); *Howard A. Williams*, 45 ECAB 853 (1994); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

²⁹ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

appellant's request for reconsideration under section 8128(a) of the Act, as she failed to submit relevant and pertinent new evidence addressing the critical issue of causal relationship.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 20, 2004 and September 3, 2003 are hereby affirmed.

Issued: April 22, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member