

**United States Department of Labor
Employees' Compensation Appeals Board**

M.A., Appellant

and

**U.S. POSTAL SERVICE, TRENTON CARRIER
ANNEX, Trenton, NJ, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 10-1911
Issued: May 11, 2011**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 14, 2010 appellant, through counsel, filed a timely appeal from a March 30, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation for wage-loss and medical benefits effective June 30, 2009; (2) whether appellant had any continuing employment-related residuals or disability after June 30, 2009.

On appeal, appellant's counsel contends the Office erred in relying upon the opinion of the Office referral physician to terminate compensation.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 22, 2008 appellant, then a 32-year-old rural carrier associate, filed a traumatic injury claim alleging that on that day he injured his shoulder when he fell as a result of a dog attack. The Office accepted the claim for left shoulder contusion which was subsequently expanded to include cervical sprain and partial tear of the left shoulder supraspinatus tendon and sprain of the left shoulder and upper arm. Appellant did not stop work, but has worked limited duty since the injury.²

On December 22, 2008 Dr. John J. DiBiase, a treating physician, provided an employment injury history, findings on physical examination and reviewed magnetic resonance imaging (MRI) scans. Diagnoses included scapulothoracic, left cervical spine strain and “rule out brachial plexitis or neuropraxia -- cervical spine, partial rotator cuff tear possible or more likely sprain of rotator cuff tendon.” A review of the MRI scans showed no full-thickness rotator cuff tear, no herniated cervical spine disc and no evidence of other gross deformities or fractures. Physical findings included mild cervical spine stiffness, tenderness of the posterior left scapulothoracic and cervical regions, good range of motion and strength, negative elbow Tinel’s sign and positive nerve compression sign at wrist radiating to the third finger and possibly also the fourth finger. In concluding, Dr. DiBiase opined that appellant might have an element of post-traumatic stress syndrome as a result of the dog attack which might prevent full recovery and function.

Dr. DiBiase in a January 19, 2009 report noted appellant complained of pain in his shoulder and neck region, but this had improved with his physical therapy. He stated that appellant was capable of performing light duty with restrictions. In a February 16, 2009 report, Dr. DiBiase stated that appellant was improving as he was getting stronger and having less pain. He noted that an electromyograph nerve conduction study showed left carpal tunnel syndrome and “there may be some type of myopathy of the muscles more proximal specifically around the shoulder region.”

In an April 16, 2009 report, Dr. Andrew M. Hutter, a second opinion Board-certified orthopedic surgeon, conducted a review of the medical records and statement of accepted facts and performed a physical examination. A physical examination revealed no tenderness on palpation of the cervical paraspinal muscles, no spasm, full cervical range of motion, a normal upper extremity sensory examination, no tenderness on palpation of the left shoulder acromioclavicular joint, full left shoulder range of motion, negative impingement and apprehension signs and symmetrical upper extremity reflexes. Dr. Hutter diagnosed cervical strain and left shoulder contusion. Based on appellant’s minimal complaints and a normal orthopedic examination, he concluded the accepted work conditions had resolved and appellant was capable of performing his date-of-injury job.

On May 27, 2009 the Office issued a notice of proposed termination of compensation benefits. It found the opinion of Dr. Hutter, the Office referral physician, to constitute the weight

² On March 9, 2010 appellant filed a schedule award claim. The Office has not issued a final decision regarding his entitlement to a schedule award. Thus, the Board does not have jurisdiction over the merits of this issue pursuant to 20 C.F.R. § 501.2(c).

of the evidence to establish that appellant's accepted conditions had resolved and there was no continuing disability or residuals. The Office found the reports of Dr. DiBiase, appellant's treating physician, was insufficient to create a conflict as his reports were unrationalized and failed to address whether appellant's condition was related to the accepted employment injury.

By decision dated June 30, 2009, the Office finalized the termination of appellant's wage-loss and medical compensation effective that day.

In a July 7, 2009 letter, counsel requested an oral hearing, which was held on October 15, 2009.

By decision dated December 15, 2009, an Office hearing representative affirmed the termination of appellant's compensation.

On February 8, 2010 counsel requested reconsideration and submitted a November 17, 2009 report from Dr. David Weiss, an osteopath, in support of his request. Dr. Weiss, based upon a review of medical evidence and physical examination, diagnosed post-traumatic left shoulder partial rotator cuff tear, post-traumatic cervical strain and sprain with C5-6 disc bulge, post-traumatic left shoulder myopathy and left carpal tunnel syndrome. The findings of cervical spine strain and sprain with C5-6 disc bulge and partial left shoulder rotator cuff tear were based on a review of an MRI scan. The diagnoses of left shoulder myopathy and left carpal tunnel syndrome were based on a review of an electromyogram test. Physical findings include left shoulder acromioclavicular tenderness, positive bilateral Spurling's, bilateral foraminal compression, speed, drop and O'Brien's tests, restricted range of left shoulder motion due to pain, cervical paravertebral tenderness and left shoulder muscle spasm. Dr. Weiss concluded that appellant's objective and subjective complaints were due to the accepted October 22, 2008 employment injury.

By decision dated March 30, 2010, the Office denied modification of the June 30, 2009 termination decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.³ After it has determined that an employee has disability causally related to his 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.⁴ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

³ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁵ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁷

ANALYSIS -- ISSUE 1

The Office accepted the claim for left shoulder contusion, cervical sprain and partial tear of the left shoulder supraspinatus tendon and sprain of the left shoulder and upper arm. The issue is whether the Office properly terminated appellant's benefits effective June 30, 2009 on the grounds that he no longer continued to experience any disability or residuals due to his employment-related injury.

Initially, the Board notes that, although the Office terminated both wage-loss and medical benefits on June 30, 2009, appellant had not stopped work following the injury, but instead returned to limited-duty work. Appellant was not on the periodic rolls following his employment injury or receiving any wage-loss compensation. As he was not receiving any wage-loss benefits, the June 30, 2009 decision effectively terminated only his medical benefits.

In his April 16, 2009 report, Dr. Hutter, an Office referral physician, diagnosed cervical strain and shoulder contusion. He concluded that appellant's conditions had resolved based on appellant's minimal complaints and a normal orthopedic examination and that appellant was able to work in his date-of-injury position. The Board finds, however, that the Office failed to meet its burden of proof to terminate medical benefits for the other accepted conditions of partial tear of the left shoulder supraspinatus tendon and sprain of the left shoulder and upper arm as Dr. Hutter did not address whether appellant had any residuals of these conditions. Dr. Hutter's opinion, consequently, is insufficient to meet the Office's burden to show that appellant had no residuals of his employment-related conditions requiring further medical treatment.⁸

CONCLUSION

The Board finds that the Office did not meet its burden of proof in terminating appellant's medical benefits effective June 30, 2009. Due to the disposition of the first issue, the second issue is moot.⁹

⁶ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ *Kathryn E. Demarsh*, *supra* note 6; *James F. Weikel*, 54 ECAB 660 (2003).

⁸ *See Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁹ *See Kenneth R. Burrow*, 55 ECAB 157 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 30, 2010 is reversed.

Issued: May 11, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board