

On September 5, 2012 OWCP referred appellant to Dr. Robert A. Smith, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding appellant's disability status. In his report, Dr. Smith opined that all of appellant's work-related conditions had resolved and that his complaints with regard to his neck, elbow and wrist were unrelated to the

work incident in question. He concluded that appellant required no further medical care and could return to work full duty.

By decision dated October 3, 2012, OWCP accepted appellant's claim for sprain of right shoulder and upper arm, contusion of shoulder and upper arm, suprascapular neuropraxia (right) shoulder, Grade 2 right acromioclavicular (AC) joint separation and right torn labrum.

On January 2, 2013 appellant was evaluated by Dr. Robert Gordon, a Board-certified orthopedic surgeon, for a referee examination in order to resolve the conflict between Dr. Smith and Dr. Nigel M. Azer, appellant's treating physician, regarding appellant's continuing disability status. Upon physical examination and review of the medical record, Dr. Gordon agreed with the findings of Dr. Smith and diagnosed right shoulder contusion and strain and mild AC joint separation as a result of the July 20, 2009 employment incident. He opined that appellant's work-related conditions had resolved and that he had no physical capacity limitations.

On February 13, 2013 OWCP notified appellant of a proposal to terminate his medical and wage-loss compensation benefits based on Dr. Smith and Dr. Gordon's opinion that he was not experiencing any residuals or disability connected to the July 20, 2009 employment injury because his conditions had ceased. Appellant was provided 30 days to submit additional information.

In a February 15, 2013 report, Dr. Azer provided a diagnosis of status post right shoulder reconstruction, right carpal tunnel syndrome (CTS), brachial plexopathy and chronic pain syndrome. He opined that appellant had residuals of his neurologic injury that occurred back in 2009. In a February 25, 2013 report, Dr. Azer reported that appellant sustained permanent impairment and restrictions as a result of his right arm condition.

By decision dated April 1, 2013, OWCP terminated appellant's medical and wage-loss compensation benefits effective May 5, 2013. It noted that the report of appellant's treating physician was void of objective evidence demonstrating that his injury was ongoing.

On April 26, 2013 appellant requested an oral hearing before the Branch of Hearings and Review.

By letter dated June 12, 2013, appellant stated that he was submitting a number of new medical reports in support of his claim to have his benefits reinstated.

Medical reports dated May 20 and 29, June 6, July 25 and 31, 2013 were submitted from Dr. Daniel R. Ignacio, appellant's treating physician and Board-certified in physical medicine and rehabilitation. A May 20, 2013 electromyography (EMG) study and intramuscular neural enhancement therapy report dated May 29 and June 6, 2013 were also submitted from Dr. Ignacio whose medical reports provided review of appellant's medical history and diagnostic reports, detailed findings based on diagnostic reports and physical examination, diagnoses of appellant's injuries and opinions regarding the cause of his conditions and disability.

Appellant also submitted the following reports in support of his claim: medical reports dated May 8 and August 14, 2013 from Dr. Azer; a July 11, 2013 neurological examination report from Dr. Annapurni Jayam Trough, a treating physician; a July 22, 2013 report from

Dr. Christopher Kalhorn, Board-certified in neurological surgery; an August 13, 2013 medical report from Dr. Daniel R. Kendall, a Doctor of Osteopathic Medicine.

The hearing was held on August 16, 2013 where appellant testified that he continued to suffer from injuries sustained as a result of the July 29, 2000 employment incident.

By decision dated November 12, 2013, the Branch of Hearings and Review affirmed the April 1, 2013 decision terminating medical and wage-loss benefits effective May 5, 2013. The hearing representative found that the medical evidence of record failed to establish that appellant possessed any condition on or after May 5, 2013 causally related to one or more of the accepted employment-related conditions. The decision noted that, following the April 1, 2013 formal decision terminating benefits, appellant requested an oral hearing which was held on August 16, 2013. The hearing representative followed by stating, “After a complete review of the evidence of record, I find that the district [O]ffice decision of April 1, 2013 must be affirmed.” On November 22, 2013 appellant, through counsel, filed a notice of appeal to the Board contesting OWCP’s November 12, 2013 decision.

The Board finds this case is not in posture for decision. Appellant properly filed a timely request for an oral hearing before the Branch of Hearings and Review. He submitted new and relevant medical evidence not previously considered. Specifically, appellant submitted numerous medical and diagnostic reports dated May 20 to August 13, 2013 from Dr. Ignacio, Dr. Azur, Dr. Trouth, Dr. Kalhorn and Dr. Kendall. The hearing representative made no mention of the reports submitted in support of appellant’s claim and failed to provide any reasoning for the findings made in the November 12, 2013 decision. The Board finds that OWCP, in its November 12, 2013 decision, did not review the new medical reports and evidence which were received prior to the issuance of the November 12, 2013 decision. As the Board’s decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP.<sup>1</sup> Because OWCP did not consider the new medical evidence submitted by appellant, the Board cannot review such evidence for the first time on appeal.<sup>2</sup>

For these reasons, the case will be remanded to OWCP to enable it to properly consider all of the evidence. Following such further development as OWCP deems necessary, it shall issue an appropriate *de novo* final decision on the claim.

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<sup>1</sup> See *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, 41 ECAB 548 (1990).

<sup>2</sup> 20 C.F.R. § 501.2(c).

**IT IS HEREBY ORDERED THAT** the November 12, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: February 26, 2014  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board