

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

J.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Richmond, CA, Employer**

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**Docket No. 14-292
Issued: May 6, 2014**

Appearances:
Hank Royal, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On November 21, 2013 appellant, through her attorney, filed a timely appeal from a September 9, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly terminated appellant's medical benefits effective June 6, 2013 because she no longer had any residuals causally related to her accepted employment-related left shoulder condition.

FACTUAL HISTORY

On December 26, 1989 appellant, then a 47-year-old mail handler (forklift driver), injured her shoulders during an altercation with another employee. OWCP accepted left

¹ 5 U.S.C. § 8101 *et seq.*

shoulder strain and cervical sprain as work related under file number xxxxxx109. On May 24, 1999 appellant filed a recurrence claim of the December 26, 1989 injury due to a worsening of her condition. As new work factors were involved, OWCP treated the claim as a new injury and accepted a left shoulder strain under the current claim, file number xxxxxx165, with a date of injury of January 19, 1999. Appellant worked four hours per day modified duty from July 18 to September 16, 2000, at which time she returned to full time. She retired from the employing establishment effective April 1, 2004. This claim was subsequently merged with appellant's other claims and deemed the master file.²

In a February 25, 2011 report, Dr. Fred Blackwell, a Board-certified orthopedic surgeon and appellant's attending physician, indicated that appellant had recurring pain issues involving the left shoulder. He noted that clinically she had diminished range of motion with positive impingement sign and tenderness along the acromion process with tenderness at the acromioclavicular (AC) joint.

In a March 28, 2011 report, Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon and OWCP referral physician, reviewed the statement of accepted facts and appellant's medical history and provided examination findings, which included full range of motion of both shoulders and good shoulder strength bilaterally.

Dr. Blackwell continued to report that appellant had pain in the left neck and shoulder. In a March 29, 2011 report, he noted a negative impingement finding and a slightly restricted range of motion in elevation. In his May 31 and June 28, 2011 reports, Dr. Blackwell reported that findings were not consistent with any sort of impingement. In September 13 and October 11, 2011 reports, he reported that appellant had positive impingement findings on the left that are intermittently present. Dr. Blackwell continued to report intermittent diminished range of motion and positive impingement findings of the left shoulder throughout 2012.

On September 25, 2012 appellant filed a recurrence of disability.

In a November 28, 2012 report, Dr. Joun-Kin Fong, a Board-certified orthopedic surgeon and OWCP referral physician, reviewed the statement of accepted facts and the medical record. He noted appellant's complaint of persistent left shoulder pain and bilateral hand weakness and numbness. On examination, motion of the shoulders was decreased bilaterally and mildly painful with a negative drop test. Arc and impingement tests were equivocal on the left. There was discomfort on palpation but not accented in the subacromial space or supraspinatus fossa. Dr. Fong stated that, apart from loss of motion, there was no evidence on examination or in the records that show any problems with the left shoulder. He noted that, while Dr. Blackwell previously diagnosed shoulder impingement syndrome, there was no objective evidence such as x-rays demonstrating spurs or magnetic resonance imaging (MRI) scans showing spurs or impingement to support a clinical diagnosis. Dr. Fong stated that, while appellant had less than normal motion today, it was noted on previous examinations from Dr. Blackwell over the past

² OWCP file number xxxxxx109, date of injury December 26, 1989, accepted for left shoulder and cervical spine strains; xxxxxx416, date of injury March 9, 1996, accepted for left hip/thigh strain; xxxxxx544, date of injury November 29, 1999, accepted for bilateral carpal tunnel syndrome; xxxxxx410, date of injury April 18, 1997, accepted for lumbar strain and right ankle strain.

decade that she had periods with normal motion. He concluded that there was no objective medical evidence of a continuing left shoulder strain. Dr. Fong also concluded that the accepted carpal tunnel syndrome remained active.

A February 25, 2013 report of cervical MRI scan stated an impression of multilevel mild degenerative changes with degraded images despite multiple repeats secondary to marked motion artifact. Additional imaging with a high resolution MRI scan was recommended if clinically indicated. April 4, 2013 x-rays of the left shoulder showed an impression of no fracture or dislocation and calcification peritendinitis.

On March 19, 2013 OWCP found that appellant had not established a recurrence of disability due to her accepted left shoulder condition.

On March 20, 2013 OWCP issued a notice of proposed termination of appellant's medical benefits due to the accepted left shoulder strain based on Dr. Fong's opinion. Appellant was advised that she had 30 days to submit additional evidence in response to the proposed termination.

In an April 4, 2013 letter, Dr. Blackwell responded to Dr. Fong's report. He stated that since Dr. Fong's evaluation appellant had undergone a repeat MRI scan study of the cervical spine, which was consistent with diffuse degenerative disc disease superimposed on congenital narrowing of the spinal canal on a developmental basis. Dr. Blackwell recommended left shoulder x-rays to rule out subacromial or AC joint spurs.

By decision dated June 6, 2013, OWCP terminated appellant's medical benefits effective the same day. It found that the medical evidence she submitted was insufficient to outweigh the weight accorded to Dr. Fong's opinion. This decision also noted that appellant had never been paid wage-loss compensation for this claim and that her claim for recurrence of disability had been denied in a separate decision.

On July 3, 2013 appellant requested a review of the record before an OWCP hearing representative.

In a July 6, 2013 letter, Dr. Blackwell noted x-ray findings of calcific tendinitis, which he attributed to degenerative changes of undetermined etiology. He opined that symptoms of such tendinitis could recur and thus account for variable range-of-motion findings, because calcification could disappear and appear without treatment. Dr. Blackwell concluded that calcific tendinitis could be a result of the accepted left shoulder injury.

By decision dated September 9, 2013, an OWCP hearing representative affirmed the June 6, 2013 termination of appellant's medical benefits, finding that the weight of the medical opinion evidence rested with Dr. Fong's opinion.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of benefits. Its burden of proof includes the necessity of furnishing rationalized medical opinion

evidence based on a proper factual and medical background.³ To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.⁴

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's medical benefits as of June 6, 2013. OWCP accepted that she sustained a left shoulder strain while in the performance of duty on January 19, 1999. Appellant received compensation benefits and eventually retired. To determine the extent and degree of any employment-related condition, OWCP referred her for a second opinion evaluation with Dr. Fong.

In a November 28, 2012 report, Dr. Fong provided an extensive review of appellant's medical history and reported examination findings. He found no objective evidence of any left shoulder condition apart from diminished range of motion. Dr. Fong explained that appellant had full left shoulder range of motion in prior examinations over the past 10 years and there was no diagnostic evidence of shoulder impingement. He concluded that there was no objective medical evidence of a continuing left shoulder strain.

The Board finds that Dr. Fong's opinion as set forth in his November 28, 2012 report is probative evidence and reliable. Dr. Fong had full knowledge of the relevant facts and previously evaluated the course of appellant's condition. His opinion is based on proper factual and medical history and he addressed both the medical records and his own examination findings in reaching a reasoned conclusion regarding whether there was evidence of a continuing left shoulder strain.⁵ The subsequent medical reports and diagnostic testing do not put into question Dr. Fong's opinion. Therefore, the subsequent medical reports do not affect Dr. Fong's opinion regarding whether there are continuing residuals of appellant's left shoulder strain. The Board finds that Dr. Fong's opinion constitutes the weight of the medical evidence and establishes that appellant's left shoulder strain has resolved.

The attending physician reports from Dr. Blackwell, both prior to and subsequent to Dr. Fong's November 28, 2012 report, do not contain a rationalized opinion that appellant continued to have residuals of her accepted left shoulder strain. In his April 4, 2013 letter, Dr. Blackwell stated that since Dr. Fong's evaluation appellant had undergone a repeat MRI scan study of the cervical spine, which was consistent with diffuse degenerative disc disease superimposed on congenital narrowing of the spinal canal on a developmental basis. However he provided no opinion or medical explanation as to whether appellant continued to have residuals of her accepted left shoulder strain. Additionally Dr. Blackwell recommended left shoulder x-rays to rule out subacromial or AC joint spurs. In his July 6, 2013 report, he

³ See *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁴ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

⁵ See *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given to each individual report).

attributed the x-ray findings of calcific tendinitis to degenerative changes of undetermined etiology. Dr. Blackwell opined that the calcific tendinitis could be a result of the accepted left shoulder injury as symptoms of such tendinitis could recur and thus account for variable range of motion findings. His opinion that appellant could have symptoms of left shoulder tendinitis is equivocal. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.⁶ Additionally the April 2013 left shoulder x-rays upon which Dr. Blackwell relied were taken almost 14 years after the date of injury. Such a lapse of time between the injury and testing lessens the probative value of the causal relationship found through such diagnostic tests.⁷ Consequently, Dr. Blackwell's reports are insufficient to cause a conflict of opinion with Dr. Fong.

The x-ray and MRI scan reports are diagnostic in nature and do not address continuing residuals. As such they are of limited probative value.

There is no other medical evidence contemporaneous with the termination of appellant's benefits which supports that she has any continuing residuals from her employment-related left shoulder strain. OWCP therefore met its burden of proof to terminate compensation.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 to 10.607.

CONCLUSION

The Board finds that OWCP properly terminated appellant's medical benefits effective June 6, 2013 on the grounds that she no longer had any residuals causally related to her accepted employment-related left shoulder strain.

⁶ *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

⁷ *Linda L. Newbrough*, 52 ECAB 323 (2001).

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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