

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

M.J., Appellant)	
)	
and)	Docket No. 15-1148
)	Issued: November 19, 2015
U.S. POSTAL SERVICE, POST OFFICE,)	
Indianapolis, IN, Employer)	
)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
Alan J. Shapiro, Esq., for the appellant	
Office of Solicitor, for the Director	

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 27, 2015 appellant, through counsel, filed a timely appeal from a November 4, 2014 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.²

ISSUE

The issue is whether OWCP properly terminated appellant's compensation benefits effective November 4, 2014 because her accepted right biceps strain had resolved by July 3, 2014 without residuals.

On appeal counsel contends that OWCP's decision is contrary to fact and law.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the November 4, 2014 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On December 11, 2013 appellant, then a 46-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she strained her upper right arm on December 10, 2013 while pushing an overloaded cart in the performance of duty.

Appellant submitted two duty status reports dated January 11 and February 8, 2014 and physical therapy notes dated December 11, 2013 through January 11, 2014.

In a December 11, 2013 report, Dr. Alfredo Lopez-Yunez, a neurologist, diagnosed right biceps strain and noted that appellant was pushing an overload cart at work after which severe pain developed in the right arm. In a work release form dated December 11, 2013, he advised that appellant was able to return to work on December 13, 2013 with the following restrictions: no lifting or carrying more than 15 pounds; no pulling or pushing more than 15 pounds; no reaching above shoulder, overhead right; and occasional reaching right arm in other directions.

On January 11, 2014 Dr. Lopez-Yunez reported that appellant's right biceps strain was improving with physical therapy but was still symptomatic, particularly with pulling mail repeatedly. He noted that there was no paresthesia. On February 8, 2014 Dr. Lopez-Yunez reported that appellant continued physical therapy.

In a March 21, 2014 report, Dr. Lopez-Yunez reviewed a magnetic resonance imaging (MRI) scan of the right shoulder dated March 18, 2014 and diagnosed moderate tendinopathy of the supraspinatus and infraspinatus, mild atrophy of the infraspinatus muscle, mild-to-moderate subacromial-subdeltoid bursitis, and mild degenerative joint disease at the acromioclavicular (AC) joint.

In a May 30, 2014 letter, OWCP notes that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay (COP) or challenge the case, payment of a limited amount of medical expenses was administratively approved. It stated that it had reopened the claim for consideration because the medical bills had exceeded \$1,500.00. OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiries.

Appellant submitted a May 16, 2014 work release form from Dr. Lopez-Yunez which advised that appellant was able to return to work on May 17, 2014 without restrictions.

By decision dated July 2, 2014, OWCP denied appellant's claim finding that she failed to establish fact of injury.

On August 7, 2014 appellant, through counsel, requested reconsideration. She submitted a July 31, 2014 narrative statement and an attending physician report dated June 30, 2014 from Dr. Lopez-Yunez who reiterated his diagnosis and medical opinions.

In a report dated July 3, 2014, Dr. Lopez-Yunez reported that appellant's injury occurred on December 10, 2013 when she was pushing an overloaded cart at work and immediately developed severe pain in the right shoulder and the anterior aspect of the arm associated with aching sensation, burning, and paresthesias. He indicated that the initial diagnosis was right

biceps strain as well as right shoulder strain. Appellant completed 28 sessions of physical therapy showing improvement in range of motion and progressive decrease in pain. Dr. Lopez-Yunez noted that she also achieved functional gains, progressively. On follow-up examination appellant showed improved range of motion and improvement of the strength of the biceps and infraspinatus and supraspinatus muscles. On May 16, 2014 her examination showed “full range of motion, no pain, and full strength of all the motor system.” Dr. Lopez-Yunez concluded that appellant had reached maximum medical improvement and her “right biceps strain/right shoulder strain [had] recovered fully without sequelae.”

By decisions dated November 4, 2014, OWCP vacated its prior decision and accepted appellant’s claim for right biceps strain. However, terminated appellant’s compensation benefits effective that day because the medical evidence established that her accepted condition had resolved by July 3, 2014.

LEGAL PRECEDENT

Once OWCP 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 or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴ OWCP’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ 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, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁷

ANALYSIS

The Board finds that OWCP properly terminated appellant’s compensation benefits because, her accepted right biceps strain had resolved by July 3, 2014 without residuals.

On November 4, 2014 OWCP accepted appellant’s claims for right biceps strain. It terminated her compensation benefits that same day because the accepted employment-related conditions had resolved without residuals based on the opinion of appellant’s attending physician, Dr. Lopez-Yunez. The issue to be determined is whether OWCP met its burden of proof to terminate appellant’s compensation benefits.

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

⁴ See *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).

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

⁷ See *James F. Weikel*, 54 ECAB 660 (2003).

In his July 3, 2014 report, Dr. Lopez-Yunez reported that appellant's injury occurred on December 10, 2013 when she was pushing an overloaded cart at work and immediately developed severe pain in the right shoulder and the anterior aspect of the arm associated with aching sensation, burning, and paresthesias. He noted that the initial diagnosis was right biceps strain as well as right shoulder strain. Appellant completed 28 sessions of physical therapy showing improvement in range of motion and progressive decrease in pain. Dr. Lopez-Yunez noted that she also achieved functional gains, progressively. On follow-up examination, appellant showed improved range of motion and improvement of the strength of the biceps and infraspinatus and supraspinatus muscles. On May 16, 2014 her examination showed "full range of motion, no pain, and full strength of all the motor system." Dr. Lopez-Yunez concluded that appellant had reached maximum medical improvement and her "right biceps strain/right shoulder strain [had] recovered fully without sequelae."

The Board finds that Dr. Lopez-Yunez's July 3, 2014 report represents the weight of the medical evidence at the time OWCP terminated benefits and OWCP properly relied on his report in terminating appellant's compensation benefits. The Board finds that he had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Lopez-Yunez is a specialist in the appropriate field. His opinion is based on a proper factual and medical history and his report contained a detailed summary of this history. Dr. Lopez-Yunez addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's condition.⁸ At the time benefits were terminated, he found no basis on which to attribute any residuals or continued disability to appellant's accepted condition. Dr. Lopez-Yunez's opinion as set forth in his July 3, 2014 report is found to be probative evidence and reliable. The Board finds that his opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted right biceps strain had ceased.

On appeal counsel contends that OWCP's decision is contrary to fact and law. However, his arguments are not substantiated based on the Board's findings in this case.

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 through 10.607.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation benefits effective November 4, 2014 because her accepted right biceps strain had resolved by July 3, 2014 without residuals.

⁸ 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).

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2014 termination decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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