

FACTUAL HISTORY

The case has previously been before the Board.² Appellant, then a 42-year-old distribution clerk, filed a claim for traumatic injury (Form CA-1) for an injury to her right shoulder on March 26, 2000. OWCP accepted right arm strain, and adhesive capsulitis and strain of the right shoulder. Appellant has not returned to work since March 26, 2000. OWCP paid wage-loss compensation for temporary total disability.

In 2007 OWCP found that a conflict existed in the medical opinion evidence between appellant's treating physician, Dr. Cranford Scott, Board-certified in internal medicine, and OWCP's second opinion physician, Dr. Thomas Dorsey, Board-certified in orthopedic surgery, as to whether appellant continued to be disabled due to residuals of the accepted injury. In a report dated September 24, 2007, Dr. Phillip D. Kiester, an impartial medical specialist and a Board-certified orthopedic surgeon, found that appellant had sustained a mild shoulder strain in March 2000 but that there were no residuals and no reason to impose restrictions on her activities. He indicated that appellant's subjective complaints of right shoulder pain were not supported by the objective findings and that the results of magnetic resonance imaging (MRI) scans of her right shoulder and neck were both normal. Dr. Kiester opined that appellant's right shoulder function was perfectly normal and was sufficient to permit usage of her right upper extremity based on her current physical findings.

By decision dated February 20, 2008, OWCP terminated appellant's compensation benefits based on Dr. Kiester's impartial medical opinion, finding that it represented the weight of the medical evidence.

Appellant requested a hearing and submitted a January 22, 2008 report from Dr. Philip A. Sobol, a Board-certified orthopedic surgeon. Dr. Sobol found that appellant had residuals from her March 26, 2000 work injury to her neck and shoulders. He advised that an October 25, 2007 computerized axial tomography (CT) scan of the right shoulder revealed mild degenerative changes in the glenohumeral joint, and acromioclavicular (AC) joint in an otherwise normal study.

By decision dated July 14, 2008, an OWCP hearing representative affirmed the February 20, 2008 termination decision.

In a letter received by OWCP on October 16, 2008, appellant requested reconsideration. She submitted results of a February 12, 2008 MRI scan which showed that appellant had a bursal surface irregularity secondary to moderate arthrosis of the AC joint, hypertrophy causing impression on the bursal surface of the supraspinatus tendon, a Type 3 anatomy of the anterior acromion, and signal changes in the superior labrum suggesting a Type 1 superior labral tear from anterior to posterior (SLAP) lesion and/or degenerative tear. The report recommended further evaluation of the right shoulder.

² The Board affirmed a March 12, 2014 OWCP overpayment decision. Docket No. 14-1209 (issued December 16, 2014).

In a September 18, 2008 report, Dr. Sobol expressed his disagreement with Dr. Kiester's impartial medical opinion. He asserted that appellant's complaints of pain were credible and caused by her March 2000 work injury. Dr. Sobol advised that she continued to experience chronic right upper extremity pain, reduced mobility, and reduced function resulting from intractable pain.

By decision dated January 9, 2009, OWCP denied modification of the July 14, 2008 decision of the Branch of Hearings and Review affirming the February 20, 2008 termination. An appeal was filed with the Board.

In a February 23, 2010 decision,³ the Board affirmed OWCP's termination decision, finding that Dr. Kiester's referee opinion negated a causal relationship between appellant's condition and disability and constituted medical evidence sufficient to establish that she no longer had any residuals from her accepted March 2000 injury. The Board, however, set aside the January 9, 2009 OWCP decision denying continuing disability following the February 20, 2008 termination decision. The Board found that Dr. Kiester should have been provided the most recent February 12, 2008 MRI scan results, which showed abnormal findings in the right shoulder. The Board remanded the case to OWCP for Dr. Kiester to review the February 12, 2008 MRI scan results and determine whether appellant had established any continuing disability caused by the March 26, 2000 employment injury. The relevant facts of this case are set forth in the Board's February 23, 2010 decision and are incorporated herein by reference.

Dr. Kiester reviewed the February 12, 2008 MRI scan results, and, in a report dated June 29, 2010, noted that the diagnostic test had been taken almost eight years after the incident and reportedly demonstrated an intact rotator cuff with moderate hypertrophy of the AC joint. Dr. Kiester advised that, while there were reportedly suggestions of a SLAP lesion, this was most likely not the case. He noted that appellant underwent an MRI scan of the left shoulder on January 28, 2008 which showed findings that were essentially symmetric with the right shoulder. Dr. Kiester opined that both shoulders reflected findings consistent with the degenerative process. He concluded that his review of the additional radiographic reports did not alter the opinions expressed in his prior report.

By decision dated July 1, 2010, OWCP denied modification of the January 9, 2009 decision, finding that Dr. Kiester's review of the February 12, 2008 MRI scan did not alter his original opinion. It found that appellant had not established continuing disability caused by the accepted employment injury and that Dr. Kiester's opinion represented the weight of the medical evidence.

Subsequent to that decision, appellant submitted several periodic progress reports, dated March 22, 2011 to June 25, 2013, from Dr. Michael Schiffman, a Board-certified orthopedist. Dr. Schiffman noted findings on examination, provided results of diagnostic tests, related appellant's continuing complaints of right shoulder pain, and generally indicated that she was temporarily totally disabled due to her right shoulder condition. In his March 22, 2011 report, Dr. Schiffman advised that appellant was awaiting authorization to undergo MRI scans of her shoulders, electromyogram (EMG) studies of the upper extremities, and a right stellate

³ Docket No. 09-1152 (issued February 23, 2010).

ganglion block. Appellant continued to complain of constant slight, intermittent moderate, and occasionally severe pain in her entire right shoulder. Dr. Schiffman reported that she had limited range of motion in the right shoulder, with decreased strength and occasional pain radiating down her right arm to the biceps and forearm. He related that her right arm felt very weak.

In a June 21, 2011 report, Dr. Schiffman advised that appellant's right shoulder was nearly frozen, with very little motion and that she had difficulty using her right arm. He noted that her muscle tone was markedly diminished in the right arm and shoulders. Dr. Schiffman stated that appellant had recently undergone EMG/nerve conduction studies which were found to be negative. He opined, however, that her symptoms were classic for carpal tunnel syndrome with radiating pain from the shoulders as well.

Dr. Schiffman stated that appellant underwent an MRI scan on April 25, 2011 which showed moderate osteoarthritis of the AC joint, slightly thickened supraspinatus tendon, and thickened fibrous capsule surrounding the right shoulder joint.

On June 22, 2011 OWCP approved Dr. Schiffman's request for a right shoulder arthroscopic procedure.

In a report dated August 16, 2011, Dr. Schiffman noted that appellant had experienced slight improvement of her right shoulder after receiving a cortisone injection. She, however, continued to have severe atrophy, weakness and severely limited motion of the right shoulder. Dr. Schiffman reiterated his diagnoses of moderate osteoarthritis of the AC joint, thickening of the supraspinatus tendon and fibrous capsule surrounding the shoulder joint, right shoulder based on the April 25, 2011 MRI scan, with development of severe adhesive capsulitis/arthrofibrosis.

In a September 27, 2011 report, Dr. Schiffman noted that he was awaiting authorization for right shoulder arthroscopy. He advised that appellant's right shoulder continued to be painful. Appellant experienced constant slight, moderate intermittent, and occasionally severe pain with limited range of motion and stiffness. She related that her pain had returned to its prior 2001 level.

Dr. Schiffman advised, in a January 10, 2012 report, that appellant continued to complain of worsening right shoulder pain which she described as constantly, slight to intermittent and occasionally severe. Appellant reported having almost no range of motion in the shoulder. Dr. Schiffman noted that the request for right shoulder arthroscopy had been approved in June 2011 and he opined that appellant remained temporarily totally disabled. He advised that he would reevaluate her in four to six weeks.

In a December 4, 2012 report, Dr. Schiffman noted that appellant had complaints of constant right shoulder pain and that it had been worsening over the previous few weeks. He reported that appellant had severe osteoarthritis of the right shoulder and recommended that she undergo physical therapy for treatment of her frozen right shoulder. Dr. Schiffman advised that she was not currently a candidate for surgery as she essentially had no significant range of motion and would likely develop a scar immediately after surgery. He asserted that, if she could improve somewhat after physical therapy, she could be a candidate for surgery; however, he

needed to review any EMG testing prior to any surgical intervention. Dr. Schiffman opined that appellant remained temporarily totally disabled.

In a report dated June 25, 2013, Dr. Schiffman asserted that appellant continued to experience right shoulder pain and stiffness, with severely limited range of motion. He related that she was unable to lie on her right side and complained of sleep disruption. Dr. Schiffman advised that appellant was awaiting EMG testing of the upper extremities. Appellant reported that she had experienced no improvement in her condition. Dr. Schiffman advised that she had frozen right shoulder, moderate osteoarthritis of the AC joint, thickening of the supraspinatus tendon, and fibrous capsule surrounding the shoulder joint as noted by her April 25, 2011 MRI scan results. He stated that he was continuing to await authorization for EMG testing of the upper extremities to evaluate the neurologic cause of appellant's severely frozen right shoulder. Dr. Schiffman opined that she remained temporarily totally disabled.

By letter dated August 6, 2014, appellant, through counsel, requested reconsideration of OWCP's July 1, 2010 decision.

By decision dated August 22, 2014, OWCP denied modification of the January 9, 2009 decision.

LEGAL PRECEDENT

Once OWCP meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that she had disability causally related to her accepted injury.⁴ To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.⁵ Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁶ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

⁴ *Manuel Gill*, 52 ECAB 282 (2001).

⁵ *Id.*

⁶ *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

In a prior appeal, the Board affirmed OWCP's termination of appellant's compensation and authorization for medical treatment dated February 20, 2008. However, the Board set aside OWCP's January 9, 2009 decision as to whether appellant had established continuing disability caused by the accepted employment injury after February 20, 2008. Appellant thus, has the burden of proof to establish disability due to residuals of the accepted conditions.⁹

The evidence submitted in support of appellant's claim of continuing disability included the February 12, 2008 MRI scan which showed moderate arthrosis of the AC joint, as well as evidence of a SLAP lesion or degenerative tear of the superior labrum. As this report offered no medical opinion as to how these diagnosed degenerative conditions would have been causally related to appellant's accepted injury, they are of no probative value.¹⁰

On September 18, 2008 Dr. Sobol disagreed with Dr. Kiester's impartial medical opinion and stated that appellant still had chronic pain from her work injury. However, he offered no rationale to explain how appellant remained disabled due to the accepted injury.¹¹

Following the Board's remand of this case, Dr. Kiester reviewed the February 12, 2008 MRI scan. He stated that the scan showed an intact rotator cuff with moderate hypertrophy of the AC joint. Dr. Kiester also did not find a SLAP lesion. He again reviewed appellant's January 28, 2008 MRI scan of the left shoulder, which showed findings that were essentially symmetric with the right shoulder. Dr. Kiester concluded that both shoulders indicated findings that were consistent with the degenerative process.

On July 1, 2010 OWCP denied modification of its prior decision.

Appellant subsequently submitted several reports from Dr. Schiffman in support of her claim of continuing disability in which she related having constant, severe pain and weakness in her right shoulder. In his June 21, 2011 report, Dr. Schiffman stated that she had a nearly frozen right shoulder, had difficulty using her right arm, and that her muscle tone was markedly diminished in the right arm and shoulders. He advised that the results of the EMG study were negative. Dr. Schiffman related that an April 25, 2011 MRI scan demonstrated moderate osteoarthritis of the AC joint, slightly thickened supraspinatus tendon, and thickened fibrous capsule surrounding the right shoulder joint. In his June 25, 2013 report, he opined that appellant had continued right shoulder pain and stiffness, with severely limited range of motion. Appellant advised that she was unable to lie on her right side, complained of sleep disruption, and felt no improvement in her condition. Dr. Schiffman stated that she had frozen right shoulder, moderate osteoarthritis of the AC joint, thickening of the supraspinatus tendon, and fibrous capsule surrounding the shoulder joint as indicated by her April 25, 2011 MRI scan

⁹ See *Daniel F. O'Donnell Jr.*, Docket No. 04-1545 (issued January 12, 2005).

¹⁰ *Supra* note 6.

¹¹ *Id.*

results. He opined in his January 10 and December 4, 2012 and June 25, 2013 reports that appellant remained temporarily totally disabled.

The reports submitted by Dr. Schiffman noted complaints of right shoulder pain, noted findings on examination, displayed results of the April 25, 2011 MRI scan which showed moderate degeneration of the right AC joint and supraspinatus tendon in the right shoulder, and asserted that she remained totally disabled. However, while appellant did exhibit right shoulder conditions, the evidence of record supports a finding that these conditions were degenerative in nature and are not causally related to the accepted injury. The Board notes that, although OWCP approved Dr. Schiffman's request for right arthroscopic surgery in June 2011, he never followed through with the procedure. Dr. Schiffman advised in his December 4, 2012 report that appellant had severe osteoarthritis of the right shoulder and recommended that she undergo physical therapy for treatment of her frozen right shoulder. He advised that, if she could improve somewhat after physical therapy, she could be a candidate for surgery. Dr. Schiffman asserted that he needed to review EMG testing prior to any surgical intervention. However, although he prescribed physical therapy, he did not perform the surgery he requested in June 2011 to ameliorate her accepted conditions. Dr. Schiffman did not provide a well-reasoned and sufficiently supported opinion that appellant had employment-related disability or residuals stemming from her accepted right arm strain, and adhesive capsulitis and strain of the right shoulder in any of the reports he submitted from March 22, 2011 to June 25, 2013. As appellant's employment injury occurred in March 2000, some 10 years prior to Dr. Schiffman's reports, it is critical that he explain with medical rationale, how the currently diagnosed conditions were causally related to the accepted conditions. Dr. Schiffman did not explain how appellant's diagnosed conditions of frozen right shoulder, moderate osteoarthritis of the AC joint, thickening of the supraspinatus tendon, and fibrous capsule were caused by residuals of the accepted employment injury.

Thus the Board will affirm OWCP's August 22, 2014 decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish continuing disability caused by residuals of her accepted right shoulder condition following termination of compensation benefits on February 20, 2008.

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2014 decision of the Office of Workers' Compensation Programs is affirmed.¹²

Issued: February 8, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹² James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.