

FACTUAL HISTORY

On June 16, 2006 appellant, then a 52-year-old transportation security screener, sustained right arm and shoulder injuries while pushing bags down a conveyor belt.² He was thereafter placed on light duty until August 25, 2006. Appellant underwent two right shoulder arthroscopies on August 25 and November 21, 2006, both of which were authorized by OWCP and performed by Dr. Timothy E. Kremchek, a Board-certified orthopedic surgeon. OWCP accepted his traumatic injury claim for right upper arm and shoulder sprains, a degenerative labral tear, synovitis and impingement syndrome. It later expanded the claim to include left upper arm and shoulder sprains. Appellant received compensation for temporary total disability beginning August 25, 2006.

OWCP requested clarification from Dr. Kremchek in a November 2, 2006 letter regarding appellant's disability status, noting that he was "expected to return to some type of modified work when no longer totally disabled because of the accepted condition." In a November 6, 2006 report, Dr. Kremchek commented that appellant's right shoulder was "really locked" and physical therapy was ineffective. His January 4, 2007 postoperative report indicated minor improvement, but added that appellant was "still unable to work at his regular occupation."³

In an April 12, 2007 work capacity evaluation form, Dr. Kremchek checked the "no" box in response to a question asking whether appellant was able to perform his regular job. He assessed that the right shoulder reached maximum medical improvement and imposed permanent 30-pound pushing, pulling and lifting restrictions as well as an overhead lifting ban. Reports from Dr. Kremchek dated July 5 and September 13, 2007 detailed that appellant sustained neck, back and left shoulder symptoms secondary to right adhesive capsulitis. Dr. Kremchek explained that appellant overused these areas since he "ha[d] to pick up the demands that he was unable to do with his right shoulder."

OWCP notified appellant in a June 5, 2008 letter that a narrative medical report was needed to determine if he remained disabled due to his work injury. In an August 28, 2008 work capacity evaluation form, Dr. Kremchek checked the "no" box in response whether appellant was able to perform his regular job and assessed that his right shoulder reached maximum medical improvement. He imposed permanent pushing, pulling and lifting limitations of 10 to 20 pounds for the left shoulder and 30 pounds for the right.

On November 18, 2008 OWCP referred appellant for a second opinion examination to Dr. Richard T. Sheridan, a Board-certified orthopedic surgeon. In Dr. Sheridan's December 3, 2008 report, appellant presented intermittent left medial parascapular numbness and right shoulder pain. He did not exhibit any major cervical or upper extremity irregularities on examination. After reviewing the November 6, 2008 statement of accepted facts and the medical

² Appellant's work activities included manual lifting, pushing and pulling of passenger baggage up to 70 pounds, bending and stooping to conduct security wand searches and standing up to two hours with no breaks.

³ Medical records indicated that appellant was released to limited duty effective February 15, 2007, but did not receive a job offer from the employing establishment.

file, Dr. Sheridan advised that appellant's subjective complaints deviated from the objective findings. He opined that the right shoulder sprain, degenerative right labral tear, right synovitis, right shoulder impingement syndrome and left shoulder sprain resolved and that appellant had no work-related cervical injuries. Dr. Sheridan concluded that appellant required no further medical treatment and was "not disabled from all or any work."

In a January 21, 2009 supplementary report, Dr. Kremchek maintained that appellant sustained a permanent right shoulder disability along with left shoulder soreness. He related that appellant's ongoing problems after two years of postoperative treatment suggested a scapular stabilizer or cervical impairment and recommended further evaluation.

OWCP determined that a conflict in medical evidence existed between Drs. Kremchek and Sheridan regarding whether appellant remained disabled as a result of his accepted employment condition or whether his condition resolved. It referred appellant to Dr. Arthur F. Lee, a Board-certified orthopedic surgeon, for a referee examination.

Dr. Lee submitted two separate reports, one regarding examination of appellant and the second pertaining to a review of medical records. In the first report dated May 21, 2009, he noted findings on examination. Appellant complained of neck, back and bilateral shoulder symptoms and denied having any injuries before the June 16, 2006 injury. He was unemployed since August 2006. On examination, appellant exhibited trace crepitation and slightly-diminished forward flexion and abduction of the shoulders as well as cervical, thoracic and lumbar tenderness. Dr. Lee remarked that visual inspection, palpation, circumference measurements and other objective testing of the biceps, triceps and shoulders did not demonstrate muscular atrophy or any other factor indicative of favoring, disuse, diminished range of motion or neurological compromise. He added that appellant's well-healed arthroscopic portals were "the only truly objective finding on examination." Sensory examination of both shoulders was normal. Although appellant voiced a variety of subjective complaints about his shoulders, Dr. Lee noted that he could not "demonstrate any objective explanation for these complaints." Dr. Lee noted the absence of palpable cervical, thoracic and lumbar spasms, which conflicted with appellant's account of tenderness. The results of gait, sensory motor, straight leg raise and heel-to-toe assessments were also inconsistent with neurologic, thoracic, lumbar and sacroiliac joint pathologies. X-rays showed type 2 and type 3 acromion process morphology of the right and left shoulders, respectively, mild degenerative C5-C6 disc disease, degenerative C4-C5 and C5-C6 facet disease, mild-to-moderate degenerative thoracic disc disease with associated kyphosis and mild diffuse degenerative lumbar facet disease. Dr. Lee commented that the degenerative changes were consistent with appellant's age. He opined that appellant's injuries "appear to be of a self-limited, soft tissue nature and the expectation would have been that they would have resolved within a fairly rapid period of time," namely three months at a maximum, with rest, medication and physical therapy. Dr. Lee concluded that the objective findings did not support disability.

In his second report dated October 15, 2009, Dr. Lee reviewed appellant's history and medical records. He pointed to the lack of findings concerning the left shoulder until two years after the accepted June 16, 2006 injury and explained that a magnetic resonance imaging scan only revealed a degenerative, nonwork-related labral cyst. Dr. Lee stated that he could provide no objective explanation as to why appellant reported continued symptoms. He stated that the

overall function of appellant's shoulder was quite good with no signs of post-traumatic arthritis, instability, ongoing rotator cuff pathology or ligamentous injury. Dr. Lee also stated that there was "absolutely no substantiation" with regard to the spinal injury complaints. He opined that the medical file could not objectively account for appellant's inhibited postoperative recovery and asserted, "From a truly objective perspective, I would place no restrictions on him whatsoever."

On December 30, 2009 OWCP issued a notice of proposed termination of wage-loss compensation and medical benefits. It gave appellant 30 days to submit rebuttal evidence.

In a January 13, 2010 report, Dr. Kremchek reiterated that appellant was unable to return to his regular occupation. He opined that, when appellant was originally hurt moving luggage, "the mechanism of action definitely irritated the right shoulder the most, but by going into a left to right fashion and lifting with his left hand, when it jammed, I'm sure that could have irritated some of the preexisting osteoarthritic changes in his [acromioclavicular] joint." Dr. Kremchek, opined that, "over time and with favoring, the soreness in his neck has persisted.... I feel with the degenerative changes that he has and the aggravation from the injury that led to the surgery and the soreness that he has had with the right side, I think it would be hard for him to go back to his original position." He recommended vocational rehabilitation to get this right arm up to full strength and then possibly appellant could work in an appropriate position.

Appellant contended in a January 16, 2010 letter that a preemployment evaluation did not reveal a preexisting condition, medical evidence supported a work-related neck injury and Dr. Lee was unqualified to administer the referee examination. He provided various Internet articles concerning the causes of cervical and lumbar degenerative disc disease.

By decision dated February 4, 2010, OWCP terminated appellant's medical and wage-loss benefits effective February 14, 2010, finding that the weight of the medical evidence established that his accepted employment conditions resolved.

Appellant requested a telephonic hearing, which was held on May 7, 2010. At the hearing, he testified that he was initially hired by the employing establishment in 2004 and did not miss work until his August 25, 2006 arthroscopy. In January 2010, appellant was advised to undergo neck surgery. He returned to regular duty on March 10, 2010 after an approximate four-year absence, but still experienced right shoulder pain, weakness and irritation and had difficulty lifting and standing continuously. Appellant's attorney argued that the medical evidence was sufficient to show employment-related bilateral shoulder and neck injuries warranting medical treatment.

On July 28, 2010 OWCP's hearing representative affirmed the February 4, 2010 decision.

LEGAL PRECEDENT

Once OWCP has accepted a claim, it has the burden of justifying termination or modification of compensation benefits,⁴ which includes furnishing rationalized medical opinion

⁴ *I.J.*, 59 ECAB 408 (2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

evidence based on a proper factual and medical background.⁵ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability ceased or was no longer related to the employment.⁶ The right to medical benefits for an accepted condition, on the other hand, is not limited to the period of entitlement to disability compensation. To terminate authorization for medical treatment, OWCP must establish that an employee no longer has residuals of an employment-related condition, which would require further medical treatment.⁷

If there is a conflict in medical opinion between the employee's physician and the physician making the examination for the United States, OWCP shall appoint a third physician, known as a referee physician or impartial medical specialist, to make what is called a referee examination.⁸ Where OWCP has referred appellant to a referee physician to resolve a conflict, the referee's opinion, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁹

ANALYSIS

OWCP accepted appellant's traumatic injury claim for right upper arm and shoulder sprains, a degenerative labral tear, synovitis and impingement syndrome and expanded it to include left upper arm and shoulder sprains. In July 5 and September 13, 2007 reports, Dr. Kremchek specified that appellant also sustained neck and back symptoms secondary to the original June 16, 2006 injury. He later expressed in an August 28, 2008 work capacity evaluation form and a January 21, 2009 report that appellant could not perform his regular job due to a permanent right shoulder disability, left shoulder soreness and a possible cervical impairment. By contrast, Dr. Sheridan's December 3, 2008 second opinion examination report opined that appellant was no longer disabled because each of his accepted employment conditions resolved and that he did not sustain a neck injury. After determining that there was a conflict in medical opinion as to whether appellant still had an employment-related condition or disability, OWCP appointed Dr. Lee as an impartial medical specialist.

The Board finds that Dr. Lee's May 21 and October 15, 2009 referee examination reports are entitled to special weight, as they were well rationalized and based on a proper factual and medical history. Dr. Lee reviewed the complete medical record and conducted an extensive physical examination, which encompassed visual inspection, palpation, measurements and an array of other tests. He observed and explained numerous discrepancies between appellant's assertions of persisting neck, back and bilateral shoulder symptoms and the objective findings, such as the lack of muscular atrophy and spasms in the afflicted areas. Also, while x-rays exhibited degenerative cervical, thoracic and lumbar changes, Dr. Lee attributed them to

⁵ *Larry Warner*, 43 ECAB 1027 (1992); *D.C.*, Docket No. 09-1070 (issued November 12, 2009).

⁶ *I.J.*, *supra* note 4.

⁷ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *L.G.*, Docket No. 09-1692 (issued August 11, 2010).

⁸ *See* 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321.

⁹ *L.W.*, 59 ECAB 471 (2007); *James P. Roberts*, 31 ECAB 1010 (1980).

appellant's age. He articulated that each of appellant's claimed symptoms involved soft tissue injuries that should have resolved within three months of onset. Dr. Lee added that the medical file could not objectively account for appellant's difficulty recuperating after his arthroscopies. Based on this thorough assessment, he concluded that appellant's employment-related disability and residuals ceased. Consequently, the Board finds that OWCP properly relied on Dr. Lee's reports in terminating appellant's medical and wage-loss benefits effective February 14, 2010.

Appellant did not furnish sufficient medical evidence to overcome the special weight afforded to Dr. Lee's opinion. A January 13, 2010 report from Dr. Kremchek, which maintained that appellant had work-related injuries and was unable to perform his job duties, failed to provide sufficient medical rationale demonstrating how an accepted condition caused a disability for his particular employment.¹⁰ A medical opinion not fortified by medical rationale is of little probative value.¹¹ Furthermore, as Dr. Kremchek was on one side of the conflict that Dr. Lee resolved, a new report from him will generally not be sufficient to create a new conflict.¹²

In addition, the various Internet articles that appellant provided are not determinative on the cause of appellant's conditions. The Board notes that such articles lack evidentiary value because a physician's reasoned opinion did not establish that the medical processes described applied to the facts and circumstances of appellant's situation.¹³

Appellant contends on appeal that the July 28, 2010 decision was contrary to fact and law. As noted, OWCP discharged its burden of justifying termination of medical and compensation benefits. 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 wage-loss compensation and medical benefits effective February 14, 2010.

¹⁰ *Dean E. Pierce*, 40 ECAB 1249 (1989).

¹¹ *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

¹² *I.J.*, *supra* note 4; *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Dorothy Sidwell*, 41 ECAB 857 (1990).

¹³ *See Robert S. Winchester*, 54 ECAB 191 (2002); *Harry Cowling*, 17 ECAB 426 (1966). *See also Patricia S. Arney*, Docket No. 04-1349 (issued November 30, 2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 28, 2010 is affirmed.

Issued: August 3, 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