

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

C.A., Appellant)

and)

**DEPARTMENT OF ENERGY, BONNEVILLE
POWER ADMINISTRATION, Vancouver, WA,
Employer**)

**Docket No. 11-1063
Issued: December 15, 2011**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 24, 2011 appellant, through her attorney, filed a timely appeal from a February 2, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether OWCP properly terminated appellant's medical benefits effective July 20, 2010.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 26, 2009 appellant, then a 51-year-old secretary, was injured when a crank slipped from her hand and struck her right shoulder. OWCP accepted the claim for a contusion of the right shoulder region. Appellant did not stop work.

In a March 27, 2009 report, Dr. Paul K. Won, Board-certified in family practice, noted the history of injury and diagnosed a right clavicle contusion. He advised that appellant could continue her regular work. March 27, 2009 x-rays read by Dr. Scott Lucas, a Board-certified surgeon, revealed a healed fracture of the distal clavicle but no evidence of a new fracture. Dr. Won continued noting appellant's status, referred her to physical therapy and later referred her to Dr. Donald H. Tilson, a Board-certified orthopedic surgeon. In a July 27, 2009 report, Dr. Tilson diagnosed a right clavicle contusion with ongoing global chest wall and shoulder pain and noted that she continued to work. An August 29, 2009 magnetic resonance imaging scan read by Dr. Winthrop D. Hall, a Board-certified diagnostic radiologist, revealed degenerative changes of the supraspinatus tendon and no evidence of a fracture. On September 9, 2009 Dr. Tilson noted Dr. Hall's findings and diagnosed a right clavicle contusion superimposed upon bilateral rotator cuff degeneration. He released appellant to regular work.

In a September 11, 2009 report, Dr. Won treated appellant and prescribed limitations at work to include no lifting repetitively over 10 pounds.

By letter dated October 1, 2009, OWCP requested additional information from Dr. Won.

In an October 5, 2009 response, Dr. Won noted that appellant's restrictions were due to her right shoulder injury. He noted that she complained of left shoulder pain as a result of sleeping on that side because of right shoulder pain caused by the injury event. In a February 16, 2010 report, Dr. Won noted that appellant had a contusion of the right clavicle with no improvement. A March 19, 2010 electromyogram scan was normal. On March 30, 2010 Dr. Won assessed a right clavicle contusion nearing maximum medical improvement. He continued appellant's work restrictions. In an April 12, 2010 x-ray of the acromioclavicular (AC) joint, Dr. David Klein, a Board-certified diagnostic radiologist, diagnosed degenerative joint disease, with no sign of AC joint separation or fracture.

On April 20, 2010 OWCP referred appellant for a second opinion, along with a statement of accepted facts, a set of questions and the medical record to Dr. Aubrey Schwartz, a Board-certified orthopedic surgeon, to determine if the work injury had resolved.

In a report dated May 13, 2010, Dr. Schwartz described appellant's history of injury and treatment and examined her. Appellant reported current symptoms of tenderness in both shoulders and occasional numbness in both palms. On examination her reflexes and sensation were intact in the upper extremities. Dr. Schwartz noted tenderness in both anterior shoulders, both sternoclavicular joints, right infraclavicular region, slightly in the supraclavicular and left infraclavicular region. He determined that appellant was status post contusion of the right clavicle, with associated degenerative changes in the AC joint of the right shoulder with tendinosis of the supraspinatus, right shoulder. He opined that the contusion appeared to have aggravated a previous AC joint arthritis; however, there was no evidence that there were

residuals of the injury, noting it was a temporary aggravation. Dr. Schwartz noted that, with respect to the origin of appellant's pain, it was unclear, undetermined and nonspecific, but that it was not related to the work injury. He also noted that both shoulders were symptomatic. Dr. Schwartz indicated that both clavicle regions and shoulders were tender; however, the contusion of the shoulder resolved within six months of the injury or September 26, 2009. He opined that appellant was capable of performing her usual and customary job without restrictions based upon her industrial injury.

On June 10, 2010 OWCP issued a notice of proposed termination of compensation. It proposed to terminate appellant's medical benefits on the basis that the report of Dr. Schwartz, established that the residuals of the work injury of March 26, 2009 had ceased.

In a July 5, 2010 letter, appellant disagreed with the proposed termination. She alleged that she continued to suffer from her work injury. In support of her argument appellant provided additional medical evidence. In a June 28, 2010 report, Dr. Tilson opined that her current shoulder pain was the direct and proximate result of her work injury. He opined that despite a preexisting arthritic condition that, could also be the cause of appellant's symptoms, he believed it was more probable than not "(that is over 51 percent more likely)" that the work injury was the reason for her condition.

By decision dated July 23, 2010, OWCP terminated appellant's medical benefits effective July 20, 2010 on the grounds that she had no continuing residuals of her employment injury.

On August 4, 2010 appellant's representative requested a hearing, which was held on November 3, 2010. During the hearing appellant described her injury and the subsequent symptoms. She also noted that she was aware that diagnostic studies failed to demonstrate an acute injury. Appellant also noted a prior injury to her shoulder in 2006, which was minor and had resolved. She also indicated that she did not believe that the second opinion physician properly examined her. Additionally, appellant was unaware that she was arthritic prior to her injury.

In a report dated October 4, 2010, Dr. Phyllis T. Dunckel, a Board-certified family practitioner, noted that appellant was complaining of neck pain as well as a "crunchy feeling" across her chest. She noted that appellant was "seen by ortho, psychiatry and neurology," however, "there has been nothing found to explain her pain."

In an October 7, 2010 report, Dr. Tilson advised appellant's attorney that he had "nothing else to offer in the case." He noted that appellant continued to complain of distressing pain that she ascribed to her injury of March 26, 2009. Dr. Tilson stated that she felt that she deserved "belief" although his examination was "essentially devoid of objective findings, other than those associated with arthritis."

Appellant provided comments which were received by OWCP on December 8, 2010. She reiterated that she continued to suffer with pain and residuals of her employment injury.

By decision dated February 2, 2011, an OWCP hearing representative affirmed the July 23, 2010 decision.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² Having determined that, an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁴ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁵

ANALYSIS

OWCP accepted appellant's claim for a contusion of the right shoulder region. Appellant did not lose time from work. OWCP terminated her medical benefits based on the report of Dr. Schwartz, a Board-certified orthopedic surgeon, who served as a second opinion physician.

Dr. Schwartz examined appellant on May 13, 2010. He reviewed her medical history and reported findings that included tenderness in both shoulders. Dr. Schwartz determined that appellant was status post contusion of the right clavicle. He also noted degenerative changes in the AC joint of the right shoulder with tendinosis of the supraspinatus and preexisting AC joint arthritis. Dr. Schwartz opined that, while the accepted right shoulder contusion appeared to have aggravated appellant's preexisting arthritis, this was a temporary aggravation that had resolved. He also opined that the accepted right shoulder contusion resolved within six months of the injury or September 26, 2009. Dr. Schwartz noted that, while the origin of appellant's pain was unclear, undetermined and nonspecific, it was not related to the work injury. He indicated that she was capable of performing her usual and customary job without restrictions based upon her industrial injury.

The Board notes that Dr. Schwartz conducted a thorough examination, reviewed appellant's medical history and found no basis on which to attribute any continuing medical residuals to the accepted condition, contusion of the right shoulder. Instead, Dr. Schwartz found that based on his examination that she no longer had residuals of her work-related injury. The Board finds that his report provided an accurate history of injury and results of physical examination and established that residuals of the accepted thoracic strain had resolved.

There is no contemporaneous medical evidence of equal weight supporting appellant's claim for continuing medical residuals. Although OWCP received a June 28, 2010 report from Dr. Tilson, who opined that her current shoulder pain was the direct and proximate result of her work injury, he opined that a preexisting arthritic condition could also be the cause of her

² *Curtis Hall*, 45 ECAB 316 (1994).

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁵ *Calvin S. Mays*, 39 ECAB 993 (1988).

symptoms. He found that it was more probable than not “over 51 percent more likely” that the work injury was the reason for her condition. However, Dr. Tilson did not explain the medical reasons for his opinion that appellant’s continuing condition was caused by the March 26, 2009 work injury. A medical opinion not fortified with medical rationale is of diminished probative value.⁶ This is especially important in light of his October 7, 2010 report, in which Dr. Tilson acknowledged that orthopedic testing was “essentially devoid of objective findings, other than those associated with arthritis.”

Likewise the report from Dr. Dunckel dated October 4, 2010 merely indicates that appellant had neck pain and a “crunchy feeling” across her chest. She noted that “nothing had been found” to explain appellant’s pain. This report does not support continuing residuals of the March 26, 2009 work injury.

The Board finds that OWCP properly relied on Dr. Schwartz’ report to conclude that appellant had no continuing medical residuals as a result of her accepted employment injury. Therefore, OWCP met its burden of proof to terminate her medical 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 met its burden of proof in terminating appellant’s medical benefits effective July 20, 2010.

⁶ See *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 15, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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