

FACTUAL HISTORY

On October 11, 2007 appellant, then a 46-year-old mail processor, filed a claim alleging that she sustained an injury to her right shoulder and arm on August 29, 2007 in the performance of duty. She stopped work on August 30, 2007. OWCP accepted the claim for a sprain of the right shoulder and upper arm.² It paid compensation from October 3, 2007 to April 10, 2008.

In a progress report dated January 4, 2008, Dr. Oluseyi Senu-oke, Board-certified in family medicine, discussed appellant's complaints of continued numbness in her fingers and cracking of the right shoulder with movement. He diagnosed right shoulder cuff tendinitis and impingement. On March 25, 2008 Dr. William A. Newcomb, a Board-certified orthopedic surgeon, diagnosed impingement and scapular dyskinesia of the right shoulder. In a duty status report dated March 13, 2009, Dr. Senu-oke diagnosed right shoulder tendinitis and found that appellant could not reach over the shoulder for more than two hours per day.

In an April 11, 2008 decision, OWCP suspended appellant's compensation under 5 U.S.C. § 8123(d) for refusing to cooperate with a medical examination. By decision dated September 19, 2008, a hearing representative affirmed the April 11, 2008 decision.

On January 7, 2010 OWCP referred appellant to Dr. Noubar Didizian, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated February 3, 2010, Dr. Didizian discussed her history of a right arm sprain due to an August 29, 2007 employment injury. He noted that appellant worked limited duty beginning March 2006 following surgery for carpal tunnel syndrome. Dr. Didizian related that she currently worked in the position she was in at the time of her August 2007 employment injury. On examination he found excellent mobility of the shoulder with no pain, instability or crepitation at the acromioclavicular joint and that all tests were "negative for any intrinsic shoulder pathology" or peripheral nerve involvement. Dr. Didizian determined that appellant had no loss of function of the pectoralis and latissimus dorsi. He noted that she had not received medical treatment for her right shoulder or arm since 2008. Dr. Didizian discussed appellant's complaints of aching and stiffness in the right shoulder. He interpreted an August 30, 2008 magnetic resonance imaging (MRI) scan study of the right shoulder as showing "increased signal in the level of the supraspinatus at the musculotendinous junction with no evidence of any acute tear or full-thickness tear." Dr. Didizian diagnosed resolved right shoulder supraspinatus tendinitis with "minimal subjective complaints" and asserted that the MRI scan study supported his diagnoses. He stated, "It is my medical opinion at this point that objectively [appellant] ha[s] returned to her preinjury level." Dr. Didizian opined that she might again develop symptoms given that her job caused her original injury. He recommended that appellant continue isometric exercises to retain range of motion. In an accompanying work restriction evaluation, Dr. Didizian determined that she could return to her usual employment without restrictions.

On March 17, 2010 OWCP advised appellant that it proposed to terminate her medical benefits based on Dr. Didizian's finding that she had no residuals of her accepted employment injury.

² OWCP had previously accepted that appellant sustained bilateral carpal tunnel syndrome under another file number xxxxxx674.

On March 31, 2010 appellant contended that OWCP should have accepted her claim for right shoulder mild tendinosis of the supraspinatus tendon.³ She noted that Dr. Didizian found that she continued to experience minimal subjective symptoms of the supraspinatus tendinitis due to her employment. Appellant asserted that he found that she might reinjure herself if she continued to work in her preinjury position. She argued that Dr. Didizian did not find that she had no residuals of her work-related condition.

On June 27, 2010 appellant related that she “tried to report to regular duty in April 2010” but that the employing establishment refused to allow her to work full duty due to her carpal tunnel syndrome, accepted by OWCP under another file number. She requested a statement from OWCP addressing whether she could work in a full-duty capacity.

By decision dated July 1, 2010, OWCP terminated appellant’s medical benefits effective June 30, 2010, on the grounds that Dr. Didizian’s opinion established that she had no further need for medical treatment due to her accepted work injury.

On July 27, 2010 appellant requested a review of the written record. She related that she continued to require medical treatment for her right shoulder and referred to the MRI scan studies.⁴ Appellant submitted medical evidence from 2007. In a report dated July 14, 2010, Dr. Newcomb noted that she was performing her usual employment. He reviewed Dr. Didizian’s report and found that his examination and the conclusions reached were “objective.” Dr. Newcomb discussed appellant’s complaints of some continued right shoulder symptoms and noted that she wanted another MRI scan study to assist her in her dispute with her employer. He referred her for an MRI scan study.

By decision dated November 9, 2010, an OWCP hearing representative affirmed the July 1, 2010 decision. She found that the medical evidence established that appellant had no residuals of her accepted right shoulder strain.

On appeal, appellant argued that the hearing representative did not consider the July 20, 2010 MRI scan study. She also maintained that Dr. Newcomb provided medical evidence in 2008 and 2009 supporting her claim.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee’s benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵

³ Appellant also maintained that her benefits should be reinstated as she cooperated with the second opinion examination. By letter dated June 25, 2010, OWCP advised her that it had reinstated her benefits retroactive to October 19, 2009.

⁴ An MRI scan study of the right shoulder obtained August 30, 2007 showed mild supraspinatus tendinitis. Electrodiagnostic studies dated September 14, 2007 were normal. Appellant referred to a July 20, 2010 MRI scan study but it is not in the case record.

⁵ *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ 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.⁸

ANALYSIS

OWCP accepted that appellant sustained sprains of the right shoulder and upper arm due to an August 29, 2007 employment injury. Appellant received compensation for total disability until April 11, 2008, when OWCP suspended her compensation for failure to attend a scheduled medical examination. She returned to her date-of-injury employment duties.

The Board finds that OWCP met its burden of proof to terminate appellant's authorization for medical benefits through the opinion of Dr. Didizian, who provided a second opinion examination and determined that she had no active condition due to her accepted employment injury. In a report dated February 3, 2010, Dr. Didizian provided findings on examination of good mobility of the right shoulder without pain, instability or crepitation. He further found no "trigger points over the coracoids, biceps or the greater tuberosity" and "full function of the pectoralis and latissimus dorsi." Dr. Didizian opined that appellant had no peripheral nerve involvement or shoulder pathology. He diagnosed resolved right shoulder supraspinatus tendinitis with mild subjective complaints. Dr. Didizian asserted that appellant had returned to preinjury condition and that she could perform her usual employment. He provided a thorough review of the factual and medical background and accurately summarized the relevant medical evidence. Moreover, Dr. Didizian provided detailed findings on examination and reached conclusions regarding appellant's condition which comported with his findings.⁹

On July 14, 2010 Dr. Newcomb reviewed Dr. Didizian's report and found that it was objective in its findings and conclusions. He noted that appellant reported some continued symptoms and wanted an MRI scan study. As Dr. Newcomb concurred with Dr. Didizian's findings, his opinion is insufficient to show that she has residuals of her accepted employment injury. The Board thus finds that the weight of the evidence establishes that appellant had no further residual condition due to her accepted work injury effective June 30, 2010, the date OWCP terminated her authorization for medical benefits.

⁶ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁷ *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

⁸ *Id.*

⁹ *See Pamela K. Guesford*, 53 ECAB 726 (2002).

On appeal, appellant contends that Dr. Newcomb's reports from 2008 and 2009 support her claim. In his most recent report dated July 14, 2010, however, Dr. Newcomb agreed with Dr. Didizian's conclusions.¹⁰

Appellant argues that the hearing representative failed to consider the July 20, 2010 MRI scan study. The record, however, does not contain a July 20, 2010 MRI scan study. 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 medical benefits effective June 30, 2010 on the grounds that she had no need for further medical treatment due to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 9 and July 1, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 29, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ In a report dated March 5, 2008, Dr. Newcomb suggested desk work for appellant and no right arm reaching. On April 29, 2008 he injected her subacromial bursa to manage shoulder pain.