



that day. He was released to return to work with temporary work restrictions and retired on February 28, 2009. OWCP accepted the claim for right knee abrasion, right shoulder supraspinatus tendinosis and right shoulder full thickness tear. On April 6, 2009 Dr. Robert Lieurance, a Board-certified orthopedic surgeon, released appellant to regular-duty work. Due to increasing right shoulder symptoms, appellant underwent a June 3, 2009 right shoulder arthroscopy, which OWCP authorized. He then elected FECA benefits effective June 3, 2009.

In a November 23, 2009 report, Dr. Lieurance noted that appellant had some limitation in internal rotation and released him to regular work duties. In a November 23, 2009 slip, he reiterated that appellant was fit for regular duty. On November 23, 2009 Dr. Lieurance advised that appellant had no work restrictions. The employer's portion of the form indicated that appellant's date-of-injury job as building maintenance custodian required lifting and carrying 30 pounds one hour a day and reaching above shoulder intermittently zero to one hour per day, among other things.

In a November 23, 2009 letter, appellant noted that his physician released him to full duty and requested that OWCP stop his compensation payments and restore his annuity through the Office of Personnel Management.

By decision dated December 3, 2009, OWCP terminated appellant's wage-loss compensation benefits effective November 23, 2009. It advised that the claim remained open for medical care.

In a December 14, 2009 report, Dr. Lieurance noted that appellant was doing well and could continue full duty without restrictions. He found that appellant had six percent permanent impairment of the right shoulder under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

On December 14, 2009 appellant requested an oral hearing before an OWCP hearing representative. In a December 14, 2009 letter, he argued that Dr. Lieurance's release to work was based on a duty status report (Form CA-17) provided by OWCP's contract nurse which contained an erroneous description of his duties. Appellant noted that the duty status report stated that his duties included intermittent reaching above the shoulder for less than one hour a day, while his duties included overhead dusting and repairing light fixtures that required continuous and prolonged reaching above the shoulder. He stated that, when he told Dr. Lieurance that he did continuous and prolonged reaching above the shoulder level work, the physician stated that he would not have released him had he known.

On February 1, 2010 appellant requested a review of the written record instead of an oral hearing. He provided a statement from three coworkers who corroborated his assertion that his job required continuous and prolonged reaching with regard to maintaining 163 light fixtures at work. Appellant contended that he was not fit for his date-of-injury job and requested compensation. A January 27, 2010 typed statement signed by coworkers Douglas Efird, Joshua Hobson and Sharon Ragsdale, all clerks, stated: "We the undersigned worked with [appellant] for a number of years at the [employing establishment]. During that time we witnessed that part of [appellant's] regular duties consisted of continuous prolonged reaching while repairing and cleaning light fixtures."

In a February 24, 2010 letter, Sherry Winkinhofer, a human resource management specialist at the employing establishment, noted that, while appellant may have had responsibility for the maintenance of 163 light fixtures in his facility, such tasks were not continuous nor prolonged and would not require prolonged and continuous reaching. Any repairs would be made on an as-needed basis and would only involve one fixture at a time. Other maintenance tasks such as dusting were not done more than biannually and, by standard practice, would be broken down into segmented blocks of time. The work would not be done all at the same time or continuously, limiting the amount of time spent at any one time in doing these tasks. Ms. Winkinhofer noted that a review of the job qualification standard form appellant referenced contained a multitude of required competencies. While the form indicated that the applicant must be able to perform “standing, walking, climbing, bending, reaching and stooping for prolonged periods of time,” he was not required to do continuous prolonged reaching above the shoulder. Ms. Winkinhofer stated that this job qualification standard was a generic description that encompassed all the duties that might be required by someone in his position and did not literally translate to the duties and tasks actually assigned or required by appellant for his position. She stated that appellant’s real life work requirements were properly detailed by the Form CA-7 provided to Dr. Lieurance.

In an undated statement received March 1, 2010, Frank Meister, a customer service supervisor, stated that appellant would replace light bulbs as needed and dusted the light fixtures maybe two to three times a year. He would have had to replace one or two bulbs a month. Mr. Meister noted that appellant did those duties along with many other duties in maintaining the building.

By decision dated May 4, 2010, an OWCP hearing representative affirmed the December 3, 2009 decision.<sup>2</sup>

On December 8, 2010 appellant requested reconsideration.<sup>3</sup> He reiterated that the employing establishment omitted relevant information concerning the physical requirements of his duties which resulted in the discontinuation of his workers’ compensation benefits. Appellant argued that Mr. Meister’s statement acknowledged that he dusted light fixtures and did not refute the fact that it required prolonged and continuous reaching above the shoulder as he claimed. He stated that the statements from three coworkers supported that the overhead dusting was often done for periods of more than one hour at a time. Appellant noted that he never received any statements from the employer and had to obtain their submissions after OWCP rendered its decision thereby not affording him an opportunity to refute their submissions.

In a December 1, 2010 statement, clerks Mr. Efrid, Mr. Hobson and Ms. Ragsdale advised that they worked with appellant for a number of years. They stated “during that time we witnessed [appellant] dusting overhead light fixtures on numerous occasions that required him to do prolonged and continuous reaching above his head often for periods of more than one hour.”

---

<sup>2</sup> By decision dated August 27, 2010, appellant was awarded six percent permanent impairment of the right arm.

<sup>3</sup> Appellant underwent a second right shoulder arthroscopy December 21, 2010, which OWCP authorized.

In a December 28, 2010 statement, Terry Powell, health and resource management specialist, advised that Ms. Winkinhofer signed a certification that she sent appellant a copy of the February 24, 2010 letter. She worked for the employer for 30 years and did not recall ever seeing anyone on ladders dusting lights.

In a January 24, 2011 statement, appellant argued that he never received anything from Ms. Winkinhofer and that Ms. Powell had no direct knowledge of the physical requirements of his duty assignments. He submitted a November 8, 2010 notice of recurrence; authorization requests; progress notes, work status reports and referrals from Dr. John Putnam, a Board-certified orthopedic surgeon, dated November 8 and 29 and December 21, 2010 and physical therapy prescriptions.

By decision dated March 11, 2011, OWCP denied modification of the May 4, 2010 decision.<sup>4</sup>

On March 22, 2011 appellant requested reconsideration. He asserted that the evidence supported that his dusting of overhead light fixtures required prolonged and continuous reaching above his head often for periods of more than one hour. Appellant stated that his assigned duties included handling express mail daily which required lifting of up to 70 pounds, but the duty status report provided to Dr. Lieurance stated that he was only required to lift 30 pounds. Appellant provided a printed page allegedly from the employer's website entitled USPS -- Classes of Mail -- Overnight/Express Mail, which noted that the maximum weight was 70 pounds. In a May 31, 2011 letter, appellant indicated that the duties of cleaning and maintaining overhead light fixtures were a small portion of his duties but, when performed, required continuous and prolonged reaching above the shoulder often for periods of more than an hour at a time. While he noted that express mail most commonly did not exceed 30 pounds, occasionally he had packages exceeding 30 pounds. Appellant contended that the physical requirements of his job had a weight limitation of 70 pounds, not the 30 pounds provided to his physician.

A copy of a standard position description of building maintenance custodian along with an updated Form CA-17 duty status report listing physical requirements of building maintenance custodian position was provided, which listed lifting/carrying of intermittent one hour per day up to 30 pounds and reaching above the shoulder intermittently up to one hour per day.

Appellant submitted reports from Dr. Putnam dated December 21, 2010 to April 4, 2011 together with a December 21, 2010 surgical report.

By decision dated June 10, 2011, OWCP denied modification of its previous decision.

---

<sup>4</sup> On January 31, 2011 OWCP upgraded appellant's claim to include the additional condition of right shoulder loose body.

## LEGAL PRECEDENT

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>5</sup> Having determined that an employee has a disability causally related to his or her federal employment, it may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>6</sup>

## ANALYSIS

OWCP accepted that appellant sustained a right knee abrasion, right shoulder supraspinatus and right shoulder five millimeter (mm) focal full thickness rent of anterior distal. Appellant was working limited duty when he retired from the employing establishment effective February 28, 2009. He elected OWCP benefits effective June 3, 2009 and was paid temporary total disability effective June 3, 2009. Dr. Lieurance, appellant's treating physician, released appellant to full duty without restrictions on November 23, 2009 and also on November 23, 2009 appellant requested that OWCP stop his compensation as he had been released to full duty. On December 3, 2009 OWCP terminated wage-loss benefits effective November 23, 2009 based on Dr. Lieurance's opinion.

The Board finds that OWCP properly terminated wage-loss benefits based on Dr. Lieurance's November 23, 2009 reports releasing appellant to return to regular-duty work. As noted, appellant retired effective February 28, 2009. On June 3, 2009 he underwent arthroscopic right rotator cuff repair with subacromial decompression and superior labrum anterior and posterior repairs. On November 23, 2009 Dr. Lieurance released appellant to regular-duty work activity. He signed a CA-17 form advising that appellant had no work restrictions. The form noted that appellant's date-of-injury job required lifting and carrying 30 pounds one hour a day and reaching above the shoulder intermittently zero to one hour per day, among other things. Dr. Lieurance's December 14, 2009 report also advised that appellant could continue working full duty without restrictions. At the time OWCP terminated wage-loss benefits, the medical evidence clearly supported that appellant could perform his regular duties. The Board finds that the weight of the probative medical evidence from the attending physician establishes that appellant was able to return to his regular work without restrictions on November 23, 2009. Consequently, OWCP properly terminated wage-loss compensation effective November 23, 2009.<sup>7</sup>

Subsequent to OWCP's termination of wage-loss benefits, appellant did not submit any medical evidence in which a physician supported that he was unable to perform his regular duties beginning November 23, 2009. Instead, appellant has argued that the CA-17 form Dr. Lieurance signed releasing him to full duty was based on an erroneous description of his usual duties. He

---

<sup>5</sup> *Bernadine P. Taylor*, 54 ECAB 342 (2003).

<sup>6</sup> *Id.*

<sup>7</sup> After a proper termination or modification of compensation benefits, the burden for reinstating compensation shifts to the claimant. To prevail, the claimant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability, which continued after termination of compensation benefits. *I.J.*, 59 ECAB 408 (2008).

claimed that his usual duties required continuous and prolonged reaching above the shoulder, such as overhead dusting and repairing light fixtures and carrying express mail weighing up to 70 pounds. However, the employer confirmed that appellant's duties were consistent with the work requirements as set forth on the November 23, 2009 Form CA-17 and it explained that any duties in which overhead reaching was required were infrequent and not continuous. Statements from coworkers attesting to appellant performing certain duties are not specific as to the exact time in which they observed appellant performing such continuous duties. Assertions by appellant that he carried express mail weighing up to 70 pounds are not otherwise corroborated by the record. The Board finds that there is no persuasive evidence indicating that Dr. Lieurance did not have an accurate understanding of the physical requirements of appellant's duties on November 23, 2009 when he released appellant to work without restrictions. Instead, the most contemporaneous evidence supports that appellant had no qualms in being released to regular duty and having his compensation stopped as his November 23, 2009 letter specifically requested that OWCP stop his compensation on November 23, 2009 because he had been released to regular duty. This letter provided no indication that appellant felt that he was unable to perform his regular duties.<sup>8</sup>

Accordingly, OWCP properly terminated appellant's wage-loss compensation effective November 23, 2009. 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 effective November 23, 2009.

---

<sup>8</sup> The Board has held that contemporaneous evidence is entitled to greater probative value than later evidence. S.S., 59 ECAB 315 (2008).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated June 10, 2011 is affirmed.

Issued: April 5, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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