

¹ 5 U.S.C. § 8101 *et seq.*

On appeal, counsel asserts that OWCP unfairly discounted the opinions of appellant's physicians and that an impartial medical examiner's opinion was too vague and equivocal to represent the weight of the medical evidence.

FACTUAL HISTORY

OWCP accepted that on June 3, 1999 appellant, then a 37-year-old mail handler, sustained a right shoulder and upper extremity strain, right wrist contusion, internal derangement of the right wrist, right ulnar neuropathy and a cervical strain when her arm became trapped between two postal containers. She stopped work on June 3, 1999 and did not return. Appellant received total disability compensation beginning on July 18, 1999. She was placed on the periodic rolls beginning in September 1996.²

Dr. Aubrey Ku, an attending Board-certified physiatrist, submitted reports dated June 10, 1999 through May 2000 finding appellant totally disabled for work due to a cervical spine sprain which she attributed to the June 3, 1999 incident. The August 16, 1999 magnetic resonance imaging (MRI) scans of the right wrist and shoulder were requested as normal.³ Dr. Franky H. Carr, an attending Board-certified orthopedic surgeon, held appellant off work from March 27, 2011 to May 15, 2007 due to right shoulder impingement, tenosynovitis of the right wrist and elbow and a right elbow contusion.

In an October 30, 2008 report, Dr. Hrair E. Darakjian, an attending Board-certified orthopedic surgeon, diagnosed a right shoulder strain, rule out right shoulder impingement, a history of right ulnar neuropathy, a right wrist contusion with internal derangement and tear of the triangular fibrocartilage complex and a cervical spine strain. He obtained MRI scans on February 27, 2009 showing a full thickness tear of the right supraspinatus tendon.⁴ On September 16, 2009 Dr. Darakjian performed right shoulder arthroplasty with an open rotator cuff repair, acromioplasty and a Mumford resection of the distal clavicle. He found appellant totally disabled for work.

On September 12, 2011 OWCP obtained a second opinion report from Dr. Alexander Doman, a Board-certified orthopedic surgeon, who reviewed the medical record and a statement of accepted facts provided by OWCP. On examination Dr. Doman found full ranges of motion of the right wrist and elbow, a full range of right shoulder motion with pain, a positive Tinel's sign at the ulnar nerve at the right elbow, no objective weakness, swelling or atrophy throughout

² OWCP terminated appellant's compensation effective January 31, 2001. Following additional medical development, it issued an April 25, 2001 decision vacating the January 31, 2001 determination and reinstating compensation retroactively.

³ A May 23, 2000 MRI scan of the right elbow showed effusions consistent with cubital tunnel syndrome. A May 15, 2000 MRI scan of the right wrist showed tenosynovitis with a possible tear of the triangular fibrocartilage complex.

⁴ On April 16, 2009 OWCP obtained a second opinion from Dr. William C. Boeck, Jr., a Board-certified orthopedic surgeon, who opined that the torn right rotator cuff demonstrated by the February 27, 2009 MRI scan was causally related to the accepted June 3, 1999 injuries. Dr. Boeck recommended the rotator cuff repair proposed by Dr. Darakjian. Based on his opinion, OWCP authorized a right rotator cuff repair.

the right arm and normal sensation. He obtained a nerve conduction velocity (NCV) study showing no abnormalities in the right upper extremity. Dr. Doman found that the accepted orthopedic conditions had resolved completely and that she could return to her date-of-injury job with no restrictions. He commented that appellant was malingering for purposes of secondary gain.

By notice dated October 12, 2011, OWCP advised appellant that it proposed to terminate her wage-loss and medical benefits as the accepted conditions had ceased without residuals. It accorded Dr. Doman the weight of the medical evidence. OWCP afforded appellant 30 days to submit evidence or argument contesting the proposed termination. Appellant did not submit additional evidence prior to December 8, 2011.

By decision dated December 8, 2011, reissued on January 11, 2012, OWCP terminated appellant's wage-loss and medical benefits effective that date.

In a January 9, 2012 letter, counsel requested reconsideration. He contended that Dr. Doman's opinion was insufficiently rationalized to represent the weight of the medical evidence. Counsel argued that Dr. Darakjian's reports were sufficient to establish continuing disability for work.

In a December 16, 2011 report, Dr. W. Joseph Absi, an attending Board-certified orthopedic surgeon, stated that he examined appellant on July 20, 2011. He provided a history of injury and treatment. On examination, Dr. Absi noted 4/5 strength in forward flexion and 4+/5 strength in external rotation and adduction of the right shoulder. X-rays demonstrated a type 1 acromion. Dr. Absi diagnosed ongoing right shoulder pain, status post rotator cuff repair. He disputed Dr. Doman's opinion that appellant was malingering. Dr. Absi recommended an MRI scan to rule out a retear of the right rotator cuff. He found that appellant remained disabled for work.

OWCP found that a conflict in medical opinion arose between Dr. Absi, for appellant, and Dr. Doman, for the government, regarding the nature and extent of any continuing disability or residuals related to the accepted injury. To resolve the conflict, it selected Dr. Warner Wood, a Board-certified orthopedic surgeon, as impartial medical examiner, who submitted a March 14, 2012 report reviewing the medical record and statement of accepted facts. On examination, Dr. Wood found painless subacromial crepitation on abduction of the right shoulder, no tenderness to palpation of the right wrist and elbow and no atrophy in the right arm and shoulder girdle. He obtained x-rays showing no abnormalities of the right wrist and elbow, resection of the right distal clavicle and no arthritic changes in the remaining acromioclavicular joint on the right. Dr. Wood diagnosed status post right rotator cuff repair and Mumford procedure. He opined that there was no objective clinical or radiographic evidence of the accepted injuries as the right wrist and elbow were not tender. Appellant also had equal muscle mass in both arms, demonstrating that she was using her right arm normally. Dr. Wood found that the right rotator cuff tear diagnosed by February 2009 MRI scan was not related to the June 3, 1999 injuries as the August 16, 1999 right shoulder MRI scan did not show a rotator cuff tear. He opined that appellant was able to return to her date-of-injury position with no restrictions.

By decision dated April 4, 2012, OWCP denied modification of the January 11, 2011 decision finding that Dr. Wood's report established that the accepted conditions had resolved without residuals.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁵ 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.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 -- ISSUE 1

OWCP accepted that appellant sustained a right shoulder and upper extremity strain, right wrist contusion, internal derangement of the right wrist, right ulnar neuropathy and a cervical strain on June 3, 1999. Through 2007, appellant was followed by Dr. Ku, a Board-certified physiatrist, and Dr. Carr, a Board-certified orthopedic surgeon. Both physicians held her off work. Dr. Darakjian, an attending Board-certified orthopedic surgeon, held appellant off work from 2008 through 2010 due to right shoulder impingement. He performed a right shoulder arthroplasty and Mumford procedure on September 16, 2009.

OWCP referred appellant to Dr. Doman, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Doman submitted reports opining that she no longer had objective residuals of the accepted right wrist, elbow and shoulder injuries. He found appellant able to return to her date-of-injury job without restrictions. Based on this report, OWCP issued an October 12, 2011 notice of proposed termination. Appellant did not submit evidence or argument in response. OWCP then terminated her compensation by December 8, 2011 decision reissued on January 11, 2012 on the grounds that the medical evidence established that the accepted right upper extremity injuries had resolved without residuals.

The Board finds that Dr. Doman's opinion was sufficient to represent the weight of the medical evidence as it was detailed, well rationalized and based on a complete factual and medical history.⁹ Appellant's physicians did not provide medical rationale supporting a

⁵ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁶ *Id.*

⁷ *Roger G. Payne*, 55 ECAB 535 (2004).

⁸ *Pamela K. Guesford*, 53 ECAB 726 (2002).

⁹ *Conard Hightower*, 54 ECAB 796 (2003).

continuing disability related to the accepted June 3, 1999 injuries. Although Dr. Darakjian found appellant disabled for work, he did not explain how and why objective residuals of the accepted injuries continued to disable her for work. His opinion was therefore insufficient to create a conflict of opinion with that of Dr. Doman.¹⁰ Thus, the Board finds that OWCP met its burden of proof in terminating appellant's compensation benefits.

On appeal, counsel asserts that OWCP unfairly discounted the opinions of appellant's physicians. As noted OWCP properly accorded Dr. Doman's opinion the weight of the medical evidence. 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.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits.¹¹ For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation.¹² The fact that a condition's etiology is unknown or obscure neither relieves appellant of the burden of establishing a causal relationship by the weight of the medical evidence nor shifts the burden of proof of OWCP to disprove an employment relationship.¹³

Section 8123(a) of FECA provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.¹⁴ When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.¹⁵ In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹⁶

¹⁰ *Solomon Polen*, 51 ECAB 341 (2000).

¹¹ *See Virginia Davis-Banks*, 44 ECAB 389 (1993); *see also Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992).

¹² *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹³ *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).

¹⁴ 5 U.S.C. § 8123(a); *Robert W. Blaine*, 42 ECAB 474 (1991).

¹⁵ *Delphia Y. Jackson*, 55 ECAB 373 (2004).

¹⁶ *Anna M. Delaney*, 53 ECAB 384 (2002).

ANALYSIS -- ISSUE 2

OWCP accepted that appellant sustained right shoulder, elbow and wrist injuries on June 3, 1999. At the time of these injuries, she was a noncareer rural carrier associate. Appellant stopped work on June 3, 1999 and did not return. By December 8, 2011 decision reissued January 11, 2012, OWCP terminated her wage-loss compensation effective December 8, 2011 on the grounds that the accepted injuries had ceased without residuals. The burden now shifts to appellant to demonstrate that she continued to be disabled for work on and after December 8, 2011 due to the accepted June 3, 1999 injuries.¹⁷

Pursuant to a January 9, 2012 request for reconsideration, counsel submitted a December 16, 2011 report from Dr. Absi, an attending Board-certified orthopedic surgeon, who diagnosed ongoing right shoulder pain and postsurgical status, noting a possible recurrent rotator cuff tear. Dr. Absi found that appellant remained totally disabled for work. OWCP found a conflict between Dr. Absi's opinion and that of Dr. Doman, and selected Dr. Wood, a Board-certified orthopedic surgeon, as an impartial medical examiner, who submitted a March 14, 2012 report containing detailed findings on examination, including full range of motion of the right shoulder, elbow and wrist, no tenderness to palpation in the wrist and elbow and normal muscle mass throughout the right arm. Dr. Wood opined that the accepted injuries had resolved without residuals and there were no objective clinical or radiographic findings of the right wrist, elbow and shoulder injuries. He also based this opinion on the complete medical record and a statement of accepted facts. OWCP denied modification by decision dated April 4, 2012, finding that Dr. Wood's opinion as the impartial medical examiner was sufficient to establish that the accepted injuries had ceased without residuals.

The Board finds that OWCP properly found that appellant did not establish a continuing disability for work on and after December 8, 2011, based on Dr. Wood's opinion as impartial medical examiner. Dr. Wood provided a detailed report, based on a complete and factual medical history, explaining the objective criteria supporting his opinion that the accepted injuries had ceased without residuals. Although Dr. Absi found appellant disabled for work due to a possible right rotator cuff re-tear, he did not opine that the accepted injuries caused an ongoing condition. Also, Dr. Wood explained that the rotator cuff tear as noted by Dr. Absi could not have been related to the June 3, 1999 injuries as it was not present on an August 16, 1999 MRI scan of the right shoulder. Therefore, OWCP correctly accorded Dr. Wood's opinion the weight of the medical evidence.¹⁸

On appeal, counsel asserts that Dr. Wood's opinion was too vague and equivocal to represent the weight of the medical evidence. As stated above, Dr. Wood's opinion was entitled to the weight of the medical evidence as it was detailed, well rationalized and based on a complete factual and medical history.

¹⁷ *Virginia Davis-Banks, supra* note 11.

¹⁸ *Anna M. Delaney, supra* note 16.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that OWCP improperly terminated her wage-loss compensation effective December 8, 2011 on the grounds that the accepted June 3, 1999 injuries had ceased.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 4 and January 11, 2012 are affirmed.

Issued: December 14, 2012
Washington, DC

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

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

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