

consider the evidence regarding disability from May 14, 2005 to July 14, 2006. In the prior decision, the Board provided a history of the case which is incorporated herein by reference.

OWCP had accepted that appellant, a mail handler, sustained cervical and right shoulder strains in the performance of duty on July 13, 2000. On December 28, 2004 appellant was working four hours a day in a modified position, and as of January 22, 2005 she increased to six hours a day. OWCP paid wage-loss compensation for the remaining two hours. On March 17, 2005 an attending orthopedic surgeon, Dr. Rolando Garcia Jr., stated that appellant had chronic neck pain radiating into the arm. He noted a magnetic resonance imaging (MRI) scan showing disc herniations at C5-6 and C6-7. Dr. Garcia recommended cervical surgery and indicated that appellant was placed in a no work status. Appellant retired from employment as of May 13, 2005.

OWCP referred appellant for a second opinion examination by Dr. Jerry Sher, a Board-certified orthopedic surgeon. In a report dated June 14, 2005, Dr. Sher stated that the work-related cervical stain represented an aggravation of preexisting cervical degenerative disc disease that had not resolved. On August 19, 2005 OWCP accepted the claim for aggravation of cervical degenerative disc disease.³ On July 24, 2006 appellant submitted a claim for compensation (Form CA-7) through July 14, 2006.

By decision dated April 5, 2007, OWCP denied the claim on the grounds that appellant had elected Office of Personnel Management disability retirement for the period May 14, 2005 to July 14, 2006. In a decision dated May 17, 2007, its hearing representative reversed the April 5, 2007 decision, and returned the case for a decision regarding disability after May 13, 2005.

Following the Board's remand on the issue of compensation from May 14, 2005 to July 14, 2006, OWCP issued a decision of May 4, 2010 that found the medical evidence did not establish any employment-related disability from May 14, 2005 to July 14, 2006. In a decision dated September 8, 2010, OWCP's hearing representative remanded the case for further development. The hearing representative noted that OWCP had the burden of proof to terminate compensation, and it had not considered the findings of second opinion physician Dr. Sher.

Appellant was referred to Dr. Brad Cohen, an orthopedic surgeon, for a second opinion examination. In a report dated October 27, 2010, Dr. Cohen provided a history and results on examination. With respect to the accepted conditions, he stated that given the length of time since the employment injury, the cervical strain had likely resolved. Dr. Cohen further stated, "It is also likely that the aggravation of [preexisting] cervical degenerative disease/spondylosis has resolved and continued symptoms of neck pain and upper extremity radiculopathy are secondary to the natural progression of the degenerative process [overtime]. The right shoulder strain has resolved. The rotator cuff tear was treated surgically and also appears to have resolved." In response to a question as to permanent work restrictions, Dr. Cohen stated that the permanent work restrictions imposed after the work injury would be appropriate, considering that appellant had a chronic degenerative neck condition that was unlikely to improve. He also included an

³ A statement of accepted facts dated September 24, 2010 indicates that OWCP has also accepted a right shoulder rotator cuff tear.

“addendum” report dated November 19, 2010 indicating that he had reviewed a November 12, 2010 functional capacity evaluation.

By letter dated November 30, 2010, OWCP requested an additional report from Dr. Cohen. It advised Dr. Cohen that terms such as “likely” were speculative and not medically rationalized. Dr. Cohen submitted a report dated December 7, 2010. He provided an additional review of the medical evidence. Dr. Cohen stated,

“Based upon my physical examination, it is my opinion that the right shoulder strain has resolved. The rotator cuff tear was treated surgically and also appears to have resolved. The shoulder exam[ination] is relatively benign, with negative impingement signs and good range of motion. It is therefore my clinical impression that continued symptoms [i]n the shoulder are actually related to the cervical degenerative condition. The shoulder was also noted to have negative impingement signs and a functional range of motion on examination by [Dr. Sher], M.D. on June 14, 2005. It was also his opinion that the work[-]related right shoulder condition had resolved with no residuals.”

With respect to the neck condition, Dr. Cohen opined that “the cervical strain and aggravation of [preexisting] cervical degenerative disease have resolved. Continued symptoms of neck pain and upper extremity radiculopathy are most likely secondary to the natural progression of the cervical degenerative process over time.”

By letter dated January 11, 2011, OWCP advised appellant it proposed to terminate her medical benefits. It stated that the weight of the medical evidence established that the employment-related conditions had resolved.

On February 7, 2011 appellant submitted a January 25, 2011 report from Dr. Merrill Reuter, an orthopedic surgeon, who indicated that she was treated for neck and right shoulder pain. Dr. Reuter provided a history and results on examination. He recommended a cervical discography, noting that “if it were to be identified that she has single or double level injury consistent with her early MRI [scans] from 2003 and 2005 that it is likely that this is from her work[-]related injury and the treatment should in fact be covered.”

By decision dated February 25, 2011, OWCP terminated medical benefits on the grounds the evidence showed that employment-related residuals had ceased.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical

⁴ *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993).

treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁵

ANALYSIS

In the present case, OWCP accepted that appellant sustained cervical and right shoulder strains, a right shoulder rotator cuff tear and aggravation of cervical degenerative disc disease. The second opinion physician, Dr. Cohen addressed all of these conditions and opined that they have resolved. While he initially used terms such as likely and most likely, the December 7, 2010 report did not use equivocal language on this issue. Moreover, Dr. Cohen supported his opinion with medical rationale.⁶ He referred to the length of time following the injury, the medical history and his own physical examination. Dr. Cohen provided detailed medical reports of record and provided an accurate medical and factual background.

The Board notes that there was no contemporaneous medical report from an attending physician establishing a continuing employment-related condition. Dr. Rueter recommended a cervical discography and “if” it showed results consistent with earlier MRI scans then it would likely be employment related. This report is of diminished probative value as it is both equivocal and dependent on future diagnostic tests.

On appeal, appellant’s representative argues that Dr. Cohen’s reports were speculative and contradictory, but a review of the reports establishes, with respect to the issue presented in this appeal,⁷ Dr. Cohen provided an unequivocal opinion and supported his opinion with medical rationale. It was not contradictory to include continuing work restrictions, as he indicated that appellant had an underlying cervical degenerative condition. The Board reiterates that Dr. Cohen provided a rationalized medical opinion that represents the weight of the medical evidence of record. 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 to terminate medical benefits effective February 25, 2011.

⁵ *Furman G. Peake*, 41 ECAB 361 (1990).

⁶ Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the opinion. *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

⁷ Dr. Cohen’s opinion regarding compensation from May 14, 2005 to July 14, 2006 is not at issue in this appeal.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 25, 2011 is affirmed.

Issued: February 6, 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