

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

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**J.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Miami, FL, Employer**

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**Docket No. 11-856  
Issued: January 3, 2012**

*Appearances:*

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 17, 2011 appellant, through her attorney, filed a timely appeal from the January 21, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating her compensation benefits. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether OWCP properly terminated appellant's wage-loss benefits effective June 6, 2010 on the grounds that she no longer had any disability causally related to her accepted employment-related injuries.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the issuance of the January 21, 2011 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. See 20 C.F.R. § 501.2(c)(1).

On appeal appellant's attorney contends that the January 21, 2011 OWCP decision is contrary to fact and law.

### **FACTUAL HISTORY**

On November 6, 2008 appellant, then a 62-year-old automation clerk, filed a traumatic injury claim for sharp left shoulder pain sustained that day while in the performance of duty. OWCP accepted the claim for left rotator cuff tear and left shoulder impingement syndrome.

On April 16, 2010 OWCP issued a notice to terminate appellant's wage-loss compensation and medical benefits based on the opinion of Dr. Fernando A. Moya, a Board-certified orthopedic surgeon and appellant's attending physician, who examined appellant on February 5, 2010. Appellant complained of pain and discomfort to her left shoulder with pushing and pulling activities. Dr. Moya diagnosed post-traumatic left shoulder impingement syndrome, rotator cuff tendinosis, subscapularis tear, labral tear and status post arthroscopic surgery. He reviewed a magnetic resonance imaging (MRI) scan report and x-ray films of the left shoulder dated February 28, 2009 and reported that appellant underwent left shoulder arthroscopy. Dr. Moya noted that appellant had some residual discomfort with certain mechanical movements such as with pushing and pulling activities but concluded that appellant had reached maximum medical improvement. He opined that she had a six percent whole person impairment rating which was a direct result of the November 6, 2008 employment injury. Dr. Moya advised that appellant was able to return to full duty without restrictions or limitations. OWCP allotted 30 days for the submission of additional evidence.

Appellant submitted a May 5, 2010 narrative statement and additional evidence. In an April 30, 2010 report, Dr. Moya reiterated the diagnoses and reported that appellant had a steroid injection. He opined that she could perform light-duty-type work with no heavy lifting, pushing or pulling. In a May 14, 2010 progress report, Dr. Moya opined that appellant was at maximum medical improvement as indicated in his February 5, 2010 report. He noted that she was returned to full duties without restrictions which had not changed.

By decision dated May 25, 2010, OWCP terminated appellant's wage-loss compensation and medical benefits effective June 6, 2010 based on Dr. Moya's opinion.<sup>3</sup>

On June 8, 2010 appellant's attorney requested an oral telephone hearing which was held before an OWCP hearing representative on October 14, 2010. The record was held open for 30 days to allow for the submission of additional evidence.

Appellant submitted an arthroscopic surgery checklist from Dr. Moya.

In a decision dated January 21, 2011, OWCP's hearing representative affirmed in part and reversed in part the May 25, 2010 decision. The medical evidence established that appellant

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<sup>3</sup> By decision dated June 8, 2010, OWCP granted appellant a schedule award for five percent permanent loss of use of the left upper extremity. It indicated that a schedule award was payable consecutively but not concurrently with an award for wage loss for the same injury and therefore the starting date of appellant's schedule award had been adjusted to June 6, 2010 as she received compensation for disability on June 5, 2010.

had no disabling residuals of her accepted employment injuries but that she remained entitled to medical benefits.

### **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 was no longer related to the employment.<sup>4</sup> 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.<sup>5</sup> The right to medical benefits for an accepted condition, on the other hand, is not limited to the period of entitlement to disability compensation.<sup>6</sup> To terminate authorization for medical treatment, OWCP must establish that an employee no longer has residuals of an employment-related condition which would require further medical treatment.<sup>7</sup>

### **ANALYSIS**

OWCP accepted appellant's traumatic injury claim for left rotator cuff tear and left shoulder impingement syndrome. It based its termination of wage-loss compensation benefits on a February 5, 2010 report from Dr. Moya, appellant's attending physician.

Dr. Moya diagnosed post-traumatic left shoulder impingement syndrome, rotator cuff tendinosis, subscapularis tear, labral tear and status post arthroscopic surgery. He reviewed an MRI scan report and x-rays of the left shoulder dated February 28, 2009. Dr. Moya indicated that appellant had some residual discomfort with certain mechanical movements such as with pushing and pulling activities but concluded that she had reached maximum medical improvement. He advised that appellant was able to return to full duty without restrictions or limitations. On April 30, 2010 Dr. Moya reported that appellant had a steroid injection and opined that she could perform light-duty-type work with no heavy lifting, pushing or pulling. However, in a May 14, 2010 progress report, he reiterated his medical opinion that appellant was at maximum medical improvement as indicated in his February 5, 2010 report. Dr. Moya reiterated that appellant was returned to full duties without restrictions and opined that that had not changed. Consequently, the Board finds that OWCP properly relied on Dr. Moya's reports in terminating appellant's wage-loss benefits effective June 6, 2010.

The Board finds that the weight of the medical evidence as represented by Dr. Moya's opinion establishes that appellant's employment-related left rotator cuff tear has resolved. OWCP properly terminated entitlement to wage-loss compensation effective June 6, 2010.

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<sup>4</sup> See *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001). See also *C.B.*, Docket No. 10-1623 (issued April 11, 2011).

<sup>5</sup> See *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>6</sup> See *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

<sup>7</sup> See *Furman G. Peake*, 41 ECAB 361, 364 (1990). See also *L.G.*, Docket No. 09-1692 (issued August 11, 2010).

Appellant's attorney contends on appeal that the January 21, 2011 decision was contrary to fact and law. As noted, OWCP met its burden of proof.

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 June 6, 2010.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 21, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 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