

four hours a day. Appellant gradually increased her work hours to full time with restrictions in June 2009. OWCP accepted the claim for left shoulder strain, left cervical radiculitis, cervical strain and paid compensation benefits.

In an August 9, 2010 report, Dr. Elaine Date, a Board-certified internist and treating physician, prescribed a restriction of no lifting, pushing or pulling over 10 pounds. She advised that appellant should not work more than four hours a day. Dr. Date continued to treat appellant. In a September 20, 2010 report, she examined appellant and noted significant left-sided neck pain radiating to the left arm, with neck muscle spasms and numbness and tingling in the left arm. Dr. Date advised that the neck was 20 percent worse with moderate left arm pain. She explained that the neck was “somewhat improved but the left hand and arm is worse.” Dr. Date recommended acupuncture and that appellant continue on her same modified duty for four hours per day and no casing. She continued to treat appellant.

On September 30, 2010 OWCP referred appellant for a second opinion, along with a statement of accepted facts, a set of questions and the medical record to Dr. Aubrey Schwartz, a Board-certified orthopedic surgeon.

In a report dated October 22, 2010, Dr. Swartz noted appellant’s history and examined her. Examination revealed minimal decreased strength in the left shoulder, normal range of motion, no neurological findings and no atrophy in the upper extremities. Dr. Swartz opined that there was a discrepancy between appellant’s subjective complaints and her objective examination findings. He noted that appellant’s primary problem appeared to be cervicothoracic; however, her pain drawing revealed significant findings over the left shoulder. Dr. Swartz diagnosed degenerative disc disease at C4-5 and C5-6 and advised that he could not provide an opinion on causal relationship, pertaining to the July 11, 2007 traumatic injury until electrodiagnostic studies were taken. OWCP referred appellant for such testing.

In a December 28, 2010 report, Dr. Swartz noted that an electromyogram (EMG) and nerve conduction study (NCS) from November 30, 2010 showed moderate left carpal tunnel syndrome. He indicated that the findings corresponded with appellant’s subjective complaints and diagnosed carpal tunnel syndrome, moderately severe in the left wrist and hand, cervical spine disc protrusion at C4-5 and left shoulder tendinitis. Dr. Swartz explained that her cervical spine strain aggravated her preexisting discogenic disease in her cervical spine and the tendinitis appeared to be secondary to a strain and appeared to be related by direct cause to the July 11, 2007 injury. He opined that the carpal tunnel syndrome was reasonably related to her claim. Dr. Swartz explained that it was assumed by appellant’s treating physicians that the pain and numbness in the left wrist and hand were represented by cervical radiculopathy. However, he explained that the electrodiagnostic studies revealed that the symptoms were actually carpal tunnel syndrome. Dr. Swartz opined that appellant had three problems. He advised that they included her neck pain, left shoulder pain and pain and numbness in the left arm, wrist and hand, which were all related to her claim. Dr. Swartz indicated that he was awaiting results of a magnetic resonance imaging (MRI) scan and would provide a supplemental report regarding the relationship between the left shoulder condition and her work injury. He opined that appellant’s prognosis was fair for her left hand carpal tunnel syndrome and recommended carpal tunnel release surgery. Dr. Swartz explained that acupuncture would not be of any benefit for her advanced carpal tunnel syndrome. He noted that appellant stated that she was working for eight

hours a day until September 2010. Dr. Swartz advised that she worked at a passport desk, answered phones and processed reports; however, she could no longer do casing or lift over 15 pounds. He noted that these dates of disability were appropriate and explained that appellant's current problem pertained to her carpal tunnel syndrome in the left wrist and hand which was work related. Dr. Swartz also noted that her complaints of pain in the neck and left shoulder as well as numbness and pain in the left arm, wrist and hand were residuals of her injury. He indicated that appellant had not reached maximum medical improvement as she needed surgery for her carpal tunnel syndrome. Dr. Swartz provided work restrictions for an eight-hour workday to include a 15-pound pushing, pulling and lifting restriction.

In a December 16, 2010 report, Dr. Date noted the EMG findings suggestive of moderate left carpal tunnel syndrome. She advised that appellant continued to have increased tingling and pain in the left upper extremities from the neck, with pain about a 6/10. Dr. Date noted that appellant was working modified duty for six hours a day. She indicated that appellant had a history of cervical disc protrusion, left C5 radiculopathy with flare up since July. Dr. Date recommended acupuncture and physical therapy for the carpal tunnel syndrome and left cervical radicular symptoms. She noted appellant's work restrictions and prescribed a resting splint.

In a January 30, 2011 supplemental report, Dr. Swartz noted that a left shoulder MRI scan was relatively unremarkable and was of no real clinical significance. Regarding continued work-related residuals, he opined that appellant made a complete recovery from the injuries to the cervical spine and left shoulder. Dr. Swartz advised that there was no tenderness in her left shoulder when he examined her on October 22, 2010, and her left shoulder range of motion was good and functional. He noted that there was no atrophy in the left arm. Regarding the cervical spine, Dr. Swartz indicated there was mild tenderness but explained that it was not problematic condition, as appellant had normal strength in her upper extremities. He opined that she had made a complete recovery from injuries of the cervical spine and left shoulder. Dr. Swartz indicated that any symptoms that appellant had at the present time were based upon degenerative changes on the imaging studies, including the degenerative disease in the cervical spine and the chronic degenerative changes in the rotator cuff/supraspinatus.

By letter dated February 17, 2011, OWCP requested clarification from Dr. Swartz with regards to appellant's left carpal tunnel syndrome and the aggravation of cervical degenerative disc disease and its duration. In a March 28, 2011 report, Dr. Swartz opined that the aggravation of cervical degenerative disease was temporary. He noted that there were degenerative changes on the MRI scan of the cervical spine that would unlikely have been affected by the episode of July 11, 2007 in which she was handling bundles of mail. Dr. Swartz noted that this was an injury that would produce a temporary flare up of pain or symptoms but would not alter the degenerative changes in the cervical spine. He advised that appellant had a broad-based disc bulge at C4-5 and C5-6 and the height was well maintained and not considered significant or affected by the present claim as there was no significant central canal stenosis, which was a relatively unremarkable finding, as were the mild disc bulges. Dr. Swartz explained that there was no evidence of radiculopathy and no nerve root injury. Regarding her carpal tunnel syndrome, he opined that the mechanism of injury described by appellant affected the median nerve resulting in carpal tunnel syndrome in her left upper extremity, which continued to be problematic.

On May 3, 2011 OWCP expanded appellant's claim to include left carpal tunnel syndrome and temporary aggravation of cervical degenerative disc disease.

On May 3, 2011 OWCP issued a notice of proposed termination of compensation. It proposed to terminate appellant's compensation for wage-loss and medical benefits on the basis that the report of Dr. Swartz established that she no longer suffered residuals of her left shoulder sprain, left cervical radiculitis, cervical strain and temporary aggravation of cervical degenerative disc disease. Benefits for left carpal tunnel syndrome were not affected.

In March 15 and April 26, 2011 treatment notes, Dr. Date indicated that appellant could work modified duty for six hours a day with restrictions that included no lifting, pushing or pulling over five pounds, and no keyboarding or computer work over a one-hour shift and no casing. She continued to treat appellant. In a May 24, 2011 report, Dr. Date noted appellant's history and diagnosed a left C5-6 radiculopathy, with a palpable double crush syndrome with a median mononeuropathy at the wrist. She explained that appellant was able to work eight hours daily within certain restrictions and with a five-minute break every hour. Dr. Date explained that her opinion differed from that of Dr. Swartz but opined that she did not believe that he had all of the medical records, including her EMG scan and NCS. She also indicated that appellant was Board-certified in electrodiagnostic medicine and her interpretation of the results from the EMG and NCS was done in November 2010.

In a May 21, 2011 statement, appellant indicated that she was confused as OWCP proposed to terminate her benefits but also expanded her claim to include left carpal tunnel syndrome and temporary aggravation of cervical degenerative disc disease.

OWCP received a copy of a May 18, 2011 job offer and a June 3, 2011 job offer. It also received December 16, 2010 and April 26, 2011 patient health questionnaires filled out by appellant. Also received were diagnostic tests from July 21, 2008, and previously of record, which Dr. Date stated revealed acute left C5 radiculopathy, with acute denervation.

In a May 28, 2011 statement, appellant indicated that, when she was seen by Dr. Robert Ferretti, a Board-certified orthopedic surgeon and second opinion physician, on November 28, 2007, he diagnosed small paracentral disc protrusions at C4-5 and mild central disc bulges at C5-6 and C3-4 from July 2007 and present cervical syndrome. She indicated that she continued to have pain in the neck area.

In a letter dated May 18, 2011, the employing establishment advised OWCP that it was able to provide appellant with a position for eight hours a day in accordance with the restrictions provided by Dr. Swartz.

By decision dated June 15, 2011, OWCP terminated compensation benefits effective that date for left shoulder sprain, left cervical radiculitis, cervical strain and temporary aggravation of her cervical degenerative disc disease. Benefits for left carpal tunnel syndrome were not terminated.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁵ 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.⁶

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given each individual report.⁷

ANALYSIS

OWCP accepted that appellant sustained left shoulder strain, left cervical radiculitis, cervical strain, temporary aggravation of cervical degenerative disc disease and left carpal tunnel syndrome and paid appropriate compensation for injury-related disability for work. It paid appropriate medical benefits and subsequently referred appellant to Dr. Swartz for a second opinion evaluation. The Board finds that the weight of the medical evidence rested with Dr. Swartz, who submitted a thorough medical opinion based upon a complete and accurate factual and medical history. Dr. Swartz performed a complete examination, reviewed the record and advised that appellant had no continued residuals disability from her accepted employment injuries, other than the left carpal tunnel syndrome.

In his October 22, 2010 report, Dr. Swartz found minimal decreased strength in the left shoulder, normal range of motion, no neurological findings and no atrophy in the upper extremities. He observed that appellant's primary problem appeared to be cervicothoracic but her pain drawing indicated significant findings over the left shoulder. Dr. Swartz diagnosed degenerative disc disease at C4-5 and C5-6 and requested that electrodiagnostic studies. On December 8, 2010 he noted that electrodiagnostic studies revealed moderate left carpal tunnel syndrome that corresponded with appellant's complaints. Dr. Swartz diagnosed left carpal tunnel syndrome, cervical spine disc protrusion at C4-5 and tendinitis of the left shoulder. He

³ *Curtis Hall*, 45 ECAB 316 (1994).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁶ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁷ *See Connie Johns*, 44 ECAB 560 (1993).

explained that appellant's cervical spine strain aggravated appellant's preexisting discogenic disease in her cervical spine and the tendinitis appeared to be secondary to a strain which was related to the work injury. Dr. Swartz explained that the carpal tunnel syndrome was work related. In a January 30, 2011 report, he reviewed an MRI scan of the left shoulder and opined that appellant made a complete recovery from the injuries to the cervical spine and left shoulder. Dr. Swartz explained that there was no tenderness in her left shoulder when he examined her on October 22, 2010, and her range of motion was good and functional in the left shoulder. Furthermore, there was no atrophy in the left upper extremity. Regarding the cervical spine, Dr. Swartz indicated that there was mild tenderness but it was not problematic as she had normal strength in her arms. He opined that appellant had made a complete recovery from injuries of the cervical spine and left shoulder. Dr. Swartz indicated that any symptoms that appellant had were due to degenerative changes on the imaging studies, including the degenerative disease in the cervical spine and the chronic degenerative changes in the rotator cuff/supraspinatus.

After OWCP requested clarification, Dr. Swartz, in a March 28, 2011 report, opined that the aggravation of cervical degenerative disease was temporary. He noted that there were degenerative changes on the MRI scan of the cervical spine that would unlikely have been affected by the work incident in which appellant was handling bundles of mail. Dr. Swartz noted that this was an injury that would produce a temporary flare up of pain or symptoms but would not alter the degenerative changes in the cervical spine. He advised that appellant had a broad-based disc bulge at C4-5 and C5-6 and the height was well maintained and not considered significant or affected by the present claim as there was no significant central canal stenosis. Dr. Swartz explained that there was no evidence of radiculopathy and no nerve root injury. He found no basis on which to attribute any continuing condition, other than left carpal tunnel syndrome, to appellant's employment.

Appellant provided several reports from Dr. Date. However, the majority of Dr. Dates' reports predate the termination date of June 15, 2011 or do not offer any reasoned opinion that she had residuals of her accepted conditions, other than left carpal tunnel syndrome, on or after that date. In her May 24, 2011 report, Dr. Date noted appellant's history and diagnosed a left C5-6 radiculopathy, with a palpable double crush syndrome with a median mononeuropathy at the wrist. The Board notes that this condition was not accepted. Furthermore, Dr. Date indicated that appellant was able to work for eight hours a day with restrictions. She did not clearly explain how these conditions were related to the accepted conditions or factors of employment. Medical reports not containing rationale on causal relation are entitled to little probative value.⁸ OWCP also received diagnostic reports dating from July 21, 2008. However, these reports were previously of record and predated the termination of benefits.

Because Dr. Swartz provided the only rationalized medical opinion of record addressing whether appellant continued to have residuals of her accepted employment injuries; his opinion constitutes the weight of the medical evidence.

The Board finds that Dr. Swartz' report established that appellant ceased to have any disability or condition causally related to her employment-related left shoulder sprain, left

⁸ See *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

cervical radiculitis, cervical strain and temporary aggravation of her cervical degenerative disc disease, thereby justifying OWCP's June 15, 2011 termination of compensation benefits pertaining to these conditions.

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 in terminating appellant's compensation benefits for her left shoulder sprain, left cervical radiculitis, cervical strain and temporary aggravation of her cervical degenerative disc disease.

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board