

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

---

**T.F., Appellant**

**and**

**U.S. POSTAL SERVICE, TOMS RIVER POST  
OFFICE, Toms River, NJ, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 12-209  
Issued: June 18, 2012**

*Appearances:*  
*Thomas R. Uliase, 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 November 8, 2011 appellant, through her attorney, filed a timely appeal from an August 29, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating her compensation and authorization for medical 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.

**ISSUES**

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's compensation benefits effective May 9, 2009 on the grounds that she had no further disability causally related to her January 23, 2007 employment injury; and (2) whether OWCP properly terminated appellant's authorization for medical benefits.

---

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

## **FACTUAL HISTORY**

This case has previously been before the Board. By decision dated May 3, 2011, the Board set aside a February 9, 2010 decision denying appellant's request for reconsideration under 5 U.S.C. § 8128.<sup>2</sup> The Board noted that her attorney asserted that the opinion of Dr. Ian B. Fries, a Board-certified orthopedic surgeon and impartial medical examiner, was inconsistent and therefore insufficient to support the termination of compensation. The Board determined that this argument was relevant, pertinent and not previously considered and sufficient to warrant reopening the case for further merit review. The Board remanded the case for OWCP to conduct a merit review of the claim. The facts and circumstances as set forth in the prior decision are hereby incorporated by reference.

On remand, OWCP considered the September 19, 2008 report from Dr. Fries, who found that appellant's neck sprain and left knee contusion had resolved. Dr. Fries diagnosed cervical degenerative disc disease, right trapezius myalgia, right rotator cuff and bicipital tendinitis, a degenerative partial tear of the rotator cuff, acromioclavicular and glenohumeral arthritis and incidental left shoulder surgery. He provided objective findings of decreased motion of the right shoulder with subjective complaints. Dr. Fried noted that appellant had no subjective complaints or objective findings of a left knee contusion and no objective findings of neck strain. He found that her loss of neck motion was most likely due to degeneration as a result of aging. Dr. Fried asserted:

“Any relationship of these findings to her January 23, 2007 accident is based upon [appellant's] claim, but is not well supported by clinical records.

“[Appellant] had no shoulder complaints acutely nor are any shoulder complaints mentioned during initial care subsequent to the accident. Right shoulder symptoms were not investigated until three months after the accident. Imaging evidences preexisting right shoulder degeneration.

“Current shoulder complaints are consistent with advancing degeneration of [appellant's] glenohumeral and acromioclavicular joints as well as continued degeneration of her rotator cuff.

“In summary, [appellant's] subjective and objective right shoulder findings are consistent with degenerative pathology and a relationship to her January 23, 2007 accident is unlikely.”

Dr. Fries found that appellant required no further medical treatment for her January 23, 2007 work injury. He opined that she was unable to perform her regular employment due to

---

<sup>2</sup> Docket No. 10-1701 (issued May 3, 2011). OWCP accepted that on January 23, 2007 appellant, then a 59-year-old rural carrier, sustained neck sprain, a contusion of the left knee, rotator cuff syndrome of the right shoulder and right bicipital tenosynovitis in a motor vehicle accident. She stopped work on April 19, 2007. OWCP determined that a conflict existed between Dr. Saquib Rehman, an attending Board-certified orthopedic surgeon, and Dr. Irvin D. Strouse, a Board-certified orthopedic surgeon, who provided a second opinion examination, regarding the extent of appellant's disability. It thus referred appellant for an impartial medical examination.

degeneration of the right shoulder and provided physical limitations on an accompanying work restriction evaluation (OWCP-5c). Dr. Fries concluded:

“[OWCP] has accepted the conditions of a neck sprain, left knee contusion [fully resolved], right rotator cuff syndrome and right bicipital tendinitis. I disagree [that] these right shoulder pathologies are causally related to the January 23, 2007 accident. However, if [OWCP’s] determination stands, then limitations I provided on the attached OWCP-5c should be considered due to the accident.”

By decision dated August 29, 2011, OWCP denied modification of its May 8, 2009 decision terminating appellant’s compensation and authorization for medical benefits. It found that Dr. Fries opined that her shoulder condition was unrelated to her work injury and that he determined that she had no residuals of her January 23, 2007 work injury.

On appeal, appellant’s attorney argues that Dr. Fries’ report is contradictory and that he found that appellant was unable to work due to her right shoulder condition. He maintains that Dr. Fries’ opinion is insufficient to meet OWCP’s burden of proof to terminate compensation.

### **LEGAL PRECEDENT -- ISSUE 1**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee’s benefits.<sup>3</sup> It may not terminate compensation without establishing that the disability ceased or that it 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>

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>6</sup> The implementing regulations states that, if a conflict exists between the medical opinion of the employee’s physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>7</sup> In situations where there exist 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 upon a proper factual background, must be given special weight.<sup>8</sup>

---

<sup>3</sup> *Elaine Sneed*, 56 ECAB 373 (2005).

<sup>4</sup> *Fred Reese*, 56 ECAB 568 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

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

<sup>6</sup> 5 U.S.C. § 8123(a).

<sup>7</sup> 20 C.F.R. § 10.321.

<sup>8</sup> *R.C.*, 58 ECAB 238 (2006); *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

OWCP's procedure manual provides as follows:

“When the DMA [district medical adviser], second opinion specialist or referee physician renders a medical opinion based on a SOAF [statement of accepted facts] which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.”<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant sustained neck strain, a left knee contusion, rotator cuff syndrome of the right shoulder and right bicipital tenosynovitis due to a January 23, 2007 motor vehicle accident. It paid compensation for total disability beginning April 19, 2007. Based on the finding of Dr. Fries, an impartial medical examiner, it terminated her compensation and authorization for medical benefits effective May 9, 2009. The Board previously found that the contention of appellant's attorney that Dr. Fries' opinion was inconsistent was sufficient to warrant reopening the case for further merit review. On remand, OWCP determined that Dr. Fries' report established that appellant had no further residuals of her accepted work injury.

When the record contains a conflict in medical opinion 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 upon a proper factual background, must be given special weight.<sup>10</sup> On September 19, 2008 Dr. Fries diagnosed cervical degenerative disc disease, right trapezius myalgia, right rotator cuff and bicipital tendinitis, a degenerative partial tear of the rotator cuff, acromioclavicular and glenohumeral arthritis and incidental left shoulder surgery. He opined that appellant's left knee contusion and neck strain had resolved. Dr. Fries advised that she had no objective findings or subjective complaints regarding her left knee and no objective findings of neck sprain. He explained that appellant's loss of neck motion was consistent with age-related degeneration. The Board finds that, regarding the accepted condition of a left knee contusion and neck sprain, Dr. Fries' opinion is well rationalized and supported by probative medical rationale. His opinion is entitled to the special weight accorded an impartial medical examiner and is sufficient to meet OWCP's burden of proof to establish that appellant had no further disability due to her accepted left knee contusion and neck sprain.<sup>11</sup>

The Board finds, however, that Dr. Fries' opinion is insufficient to establish that appellant had no employment-related disability as of May 9, 2009 due to her accepted right shoulder rotator cuff syndrome and bicipital tendinitis. OWCP provided the physician with a statement of accepted facts indicating that it had accepted rotator cuff syndrome of the right shoulder and right bicipital tenosynovitis as employment related. Dr. Fries attributed appellant's right shoulder condition to degenerative changes rather than the work injury, noting that she did

---

<sup>9</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600(3) (October 1990).

<sup>10</sup> *See supra* note 8.

<sup>11</sup> *See JaJa K. Aaramo*, 55 ECAB 200 (2004).

not complain of shoulder pain until three months after the accident and that diagnostic studies revealed preexisting changes. He found that she could not return to her usual employment due to her shoulder condition and listed work restrictions. Dr. Fries asserted that the restrictions were unrelated to the January 23, 2007 motor vehicle accident unless OWCP continued to accept that appellant's right rotator cuff syndrome and right bicipital tendinitis were employment related, in which case he advised that the restrictions "should be considered due to the accident." Consequently, he did not determine that she had no further disability due to her right rotator cuff syndrome and right bicipital tendinitis but instead found that she did not experience an employment injury to her shoulder on January 23, 2007. To the extent that Dr. Fries' opinion is outside the framework of the statement of accepted facts, it is based on an inaccurate factual history and insufficient to meet OWCP's burden of proof.<sup>12</sup> Further, he found that appellant's work restrictions were causally related to the January 23, 2007 motor vehicle accident provided that OWCP found her right shoulder condition work related. OWCP did not address whether it was attempting to rescind acceptance of her right rotator cuff syndrome and right bicipital tendinitis based on Dr. Fries' report; it did not inform her that it was contemplating rescission or actually rescind acceptance of her right shoulder conditions in its termination decision. It must inform a claimant correctly and accurately of the grounds on which a rejection rests so as to afford the claimant an opportunity to meet, if possible, any defect appearing therein.<sup>13</sup> OWCP may not find that residuals of an employment injury have ceased by a particular date when the evidence upon which the decision rests tends to support that, in fact, the injury never occurred.<sup>14</sup> Accordingly, the Board finds that OWCP did not meet its burden of proof to terminate appellant's compensation benefits.

### **LEGAL PRECEDENT -- ISSUE 2**

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>15</sup> 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.<sup>16</sup>

### **ANALYSIS -- ISSUE 2**

OWCP met its burden of proof to terminate authorization for medical benefits for the accepted conditions of a neck strain and left knee contusion through the opinion of Dr. Fries, the impartial medical examiner, who found that appellant had no residuals of these conditions. Dr. Fries explained that she had no objective findings of a neck strain and left knee contusion.

---

<sup>12</sup> See *Douglas M. McQuaid*, 52 ECAB 382 (2001) (medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of little probative value); see also *supra* note 9.

<sup>13</sup> *John M. Pittman*, 7 ECAB 514 (1955).

<sup>14</sup> See *John L. Hofmann*, Docket No. 04-1802 (issued November 22, 2004).

<sup>15</sup> *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

<sup>16</sup> *Id.*

As his opinion regarding these conditions is detailed and well rationalized, it is entitled to the special weight accorded an impartial medical examiner and establishes that appellant has no further residuals of her neck strain and left knee contusion.

The Board finds, however, that OWCP failed to meet its burden of proof to terminate medical benefits for the accepted conditions of right shoulder rotator cuff syndrome and right bicipital tenosynovitis as Dr. Fries' opinion is insufficient to show that appellant had no residuals of these conditions.

**CONCLUSION**

The Board finds that OWCP properly terminated appellant's compensation and authorization for medical benefits for the accepted condition of a left knee contusion and neck sprain. The Board further finds, however, that OWCP failed to meet its burden of proof to terminate her compensation benefits and authorization for medical treatment effective May 9, 2009 on the grounds that she had no further disability causally related to her right rotator cuff syndrome and bicipital tenosynovitis.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 29, 2011 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: June 18, 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