

aggravation of migraine headaches. Appellant did not stop work but returned to a light-duty position.

From May 13, 1987 to May 18, 1992, appellant was treated by Dr. Michael L. Finerty, a Board-certified neurologist, for neck and shoulder pain with secondary headaches caused by carrying and casing mail. On May 18, 1992 Dr. Finerty noted that appellant was doing well with restricted activity but still experienced continued complaints of cervical pain. Appellant was also treated by Dr. Linda Morse, a Board-certified internist, from February 10, 1998 to August 25, 2006. Dr. Morse diagnosed chronic cervical degenerative disc/muscle spasm with nerve root irritation and recommended permanent modified duties.

On December 1, 2006 appellant filed a Form CA-1, notice of traumatic injury, alleging that she sustained a neck injury after she was struck from behind while delivering mail in her mail truck. OWCP accepted her claim for a cervical strain and right shoulder/trapezius strain, file number xxxxxx915.

On December 4, 2006 Dr. Eibschutz Ofer, a Board-certified physiatrist, treated appellant for neck pain, headaches, left arm and shoulder pain after a work-related motor vehicle accident. He diagnosed cervical strain, shoulder strain and trapezius muscle strain. Dr. Ofer noted that appellant was disabled from December 4 to 7, 2006 and could return to modified duty on December 8, 2006. Appellant continued to be treated by Dr. Morse from August 15, 2006 to June 4, 2009, who advised that appellant could continue to work full time subject to restrictions.

In a status report dated June 2, 2010, the rehabilitation specialist noted that appellant stopped working as a modified carrier on September 28, 2009 because modified duty was no longer available at the employing establishment. OWCP paid wage-loss compensation.

In progress reports dated June 1 and September 8, 2010, Dr. Ofer diagnosed shoulder strain, trapezius muscle strain and cervical strain. He noted that appellant had an April 19, 1987 work injury and a secondary work injury on December 1, 2006. Dr. Ofer recommended modified duty and noted that acupuncture improved her symptoms. In a June 1 and September 8, 2010 duty status reports, he noted clinical findings of neck and shoulder pain and diagnosed cervical strain and shoulder strain. Dr. Ofer noted that appellant could work full time with restrictions.

OWCP referred appellant to Dr. Aubrey A. Swartz, a Board-certified orthopedist, for a second opinion. In a December 10, 2010 report, Dr. Swartz noted that examination revealed tenderness throughout the cervical spine and the right interscapular region, limited cervical spine range of motion, give-away weakness with strength testing bilaterally, positive Spurling test of the left region and normal and symmetrical reflexes. He reported inconsistencies in appellant's responses when examined, specifically noting give-away weakness with strength testing and positive Spurling test bilaterally without tenderness over either shoulder, both of which were found to be invalid responses. Dr. Swartz noted normal grip strength of the upper extremities without atrophy. He opined that appellant displayed symptom magnification with respect to her responses to the physical examination. Dr. Swartz recommended an updated functional capacity evaluation (FCE) and a magnetic resonance imaging (MRI) scan of the cervical spine.

Appellant underwent a FCE on January 18 and 20, 2011 which revealed submaximal effort and pain migration along with inconsistencies. She reported discomfort in the left upper extremity, which did not match the area of the industrial injury. There were also inconsistencies in range of motion, Jamar grip testing and lower extremity testing. A January 20, 2011 MRI scan of the right shoulder revealed mildly curved acromion, bursitis and minor supraspinatus tendinopathy. An MRI scan of the cervical spine revealed minor degenerative changes with hypertrophic bony changes with narrowing of the neural foramen at C2-3, C3-4, C4-5, C5-6, C6-7 and C7-T1. An electromyogram (EMG) dated February 22, 2011 revealed no abnormalities.

In a February 27, 2011 supplemental report, Dr. Swartz advised that the EMG and right shoulder studies were unremarkable. The December 10, 2010 examination revealed no objective neurologic findings, no atrophy of the right arm and no evidence of radiculopathy or peripheral neuropathy. Dr. Swartz noted that the FCE indicated inconsistencies and submaximal effort. He diagnosed mild spinal stenosis at the neuroforamen on the right at C5-6 with mild cervical spondylosis and nonspecific pain in the right shoulder and right upper extremity. Dr. Swartz opined that appellant's injury occurred in 1987, approximately 23 years ago and had resolved and her current symptoms were related to age-related degenerative changes in the uncovertebral and facet joint levels in addition to the development of lateral spinal stenosis at C5-6. He opined that there were no diagnosed conditions medically connected to the work injuries set forth in the statement of accepted facts. Dr. Swartz indicated that appellant had age-related degenerative changes in the cervical spine, affecting the uncovertebral and facet joints and the development of lateral spinal stenosis at C5-6. He advised that appellant reached maximum medical improvement on April 20, 1992 and that she had no residuals of her work-related injuries and required no additional treatment. Dr. Swartz found the FCE to be invalid based on the examiners description of inconsistent responses by her. In an accompanying February 28, 2011 work capacity evaluation, Dr. Swartz advised that appellant could work within restrictions that were attributable to her age-related degenerative changes in the cervical spine.

On April 13, 2011 OWCP issued a notice of proposed termination of compensation benefits based on the reports of Dr. Swartz.

In a statement dated May 8, 2011, appellant disagreed with the termination of her benefits and asserted that Dr. Swartz submitted contradicting and misleading statements regarding her chronic pain and medical history. She noted continuing pain which limited her motion and prevented her from returning to work full duty. Appellant contended that Dr. Swartz failed to thoroughly review her medical history. She submitted a February 10, 1998 report from Dr. Morse and a January 12, 1988 report from an OWCP referral physician, previously of record.

By decision dated June 1, 2011, OWCP terminated appellant's wage-loss compensation and medical benefits effective June 5, 2011. It found that Dr. Swartz opinion represented the weight of the medical evidence and established that she had no continuing residuals of her accepted injuries.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.⁴

ANALYSIS

OWCP accepted appellant's claim for work-related cervical strain and temporary aggravation of migraine headaches from her April 19, 1987 injury and a cervical strain and right shoulder trapezius strain from her December 1, 2006 work injury. It referred her for a second opinion evaluation by Dr. Swartz.

In a December 10, 2010 report, Dr. Swartz provided an extensive review of appellant's medical history, reported examination findings. He found that there were no clinical findings of any residuals or disability causally related to the accepted work injuries. Dr. Swartz opined that appellant displayed symptom magnification on physical examination. He noted findings of give-away weakness with strength testing and positive Spurling test bilaterally without tenderness over either shoulder, which were considered invalid responses. Dr. Swartz requested an updated FCE which was performed on January 18, 2011. This testing revealed submaximal effort, pain migration, left arm pain that did not match the area of the work injury and inconsistencies in range of motion, Jamar grip testing and lower extremity testing. In a February 27, 2011 supplemental report, Dr. Swartz referenced the FCE inconsistencies, the lack of objective findings from his examination. He diagnosed mild spinal stenosis at the neuroforamen on the right at C5-6 with mild cervical spondylosis and nonspecific pain in the right shoulder and right upper extremity. Dr. Swartz opined that appellant's work-related injuries of 1987 and 2006 had resolved and explained that her current symptoms were due to age-related degenerative changes in the uncovertebral and facet joint levels in addition to the development of lateral spinal stenosis at C5-6. He opined that she had no work-related residuals and required no further treatment.

The Board finds that Dr. Swartz' reports represent the weight of the medical evidence and that OWCP properly relied on his reports in terminating appellant's compensation benefits on June 5, 2011. Dr. Swartz' opinion is based on proper factual and medical history as he reviewed a statement of accepted facts and her prior medical treatment and test results. He also related his comprehensive examination findings in support of his opinion that the accepted

² *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

³ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁴ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

work-related conditions had resolved and that continuing symptoms were due to a degenerative condition that was not employment related. Dr. Swartz reported no basis on which to find that appellant had any continuing residuals of her accepted cervical strain, temporary aggravation of migraine headaches and right shoulder trapezius strain. There is no contemporaneous medical evidence of equal weight supporting her claim for continuing disability and medical residuals.

Appellant submitted duplicative reports from Dr. Morse dated February 10, 1998 and an OWCP referral physician dated January 12, 1988. These records substantially predate the termination of benefits and do not specifically address how any continuing condition or disability was causally related to the April 19, 1987 and December 1, 2006 work injuries and therefore are of limited probative value.⁵ Dr. Ofer's 2010 reports note appellant's history and diagnoses but also predate the termination of benefits and do not otherwise address how continuing diagnoses are related to the accepted injuries. Appellant also submitted copies of Dr. Swartz' reports with hand written comments and a statement expressing her disagreement with the termination of benefits and asserting that she had continuing residuals of her work-related injuries. However, the issue of whether her continuing symptoms and conditions are causally related to her work injuries is a medical issue which must be addressed by medical evidence.⁶

On appeal, appellant asserted that Dr. Swartz submitted contradicting and misleading statements regarding her chronic pain and medical history and failed to thoroughly review her medical history. She asserted that she had continuing residuals of her work-related injuries. The Board has reviewed Dr. Swartz' reports and cannot fault it on those grounds. Dr. Swartz reviewed the statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Additionally, he requested additional diagnostic testing and a FCE prior to providing his opinion. Dr. Swartz provided medical rationale for his opinion that appellant's work-related conditions have resolved.

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 has met its burden of proof to terminate benefits effective June 1, 2011.

⁵ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *See A.D.*, *id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 1, 2011 is affirmed.

Issued: March 20, 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