

FACTUAL HISTORY

OWCP accepted that on May 26, 2006 appellant, then a 46-year-old mail handler, sustained a right shoulder strain due to lifting heavy sacks of mail. She stopped work and received compensation for periods of disability.

On June 2, 2010 OWCP asked Dr. Eddie L. Whitehead, an attending Board-certified internist, to clarify a treatment note dated May 13, 2009, which indicated that appellant was able to return to light-duty work, which accommodated her myalgias, lumbago and limb pain. Dr. Whitehead had provided an opinion that her limitations from the May 26, 2006 work injury were permanent. OWCP requested that he provide a clarification of appellant's work restrictions. In a June 15, 2010 work restriction report, Dr. Whitehead indicated that she was able to work a six-hour day but had restrictions including no lifting of any kind during the workday. On July 6, 2010 OWCP sent another letter to him asking for further clarification of his June 15, 2010 work restrictions, but he did not respond to the request.

On October 12, 2010 Dr. Whitehead provided a narrative medical report in which he stated that appellant had a herniated L3-4 disc and was in need of a lumbar laminectomy. He did not mention her right shoulder strain.

OWCP referred appellant to Dr. Alexander N. Doman, a Board-certified orthopedic surgeon, for a second opinion examination and an opinion regarding whether she continued to have residuals of her May 26, 2006 right shoulder strain.

In an October 21, 2010 report, Dr. Doman concluded that appellant's accepted right shoulder strain had resolved. He stated that, upon examination, she had full range of motion of the cervical spine and shoulders. Rotator cuff strength was preserved and deep tendon reflexes were normal. Dr. Doman stated that there was no objective evidence of right shoulder injury and that appellant's work-related right shoulder condition resolved within six months of May 26, 2006. He noted that her subjective complaints of pain with light pressure over the entire right arm grossly outweighed the objective medical findings. Dr. Doman noted that the cervical and lumbar conditions noted by Dr. Whitehead were not caused or aggravated by the May 26, 2006 work injury.

OWCP determined that a conflict in medical opinion arose between Dr. Whitehead and Dr. Doman regarding whether appellant had residuals of her May 26, 2006 work injury. In order to resolve this conflict, it referred her to Dr. Frederick Wener, a Board-certified orthopedic surgeon, for an impartial medical examination and opinion on the matter.

In an April 4, 2011 report, Dr. Wener provided a description of appellant's factual and medical history. He stated that, upon physical examination, she had full range of motion of both shoulders. Appellant had almost a full range of motion of her cervical spine but complained of some vague discomfort near extremes. Dr. Wener noted that her upper extremities appeared to be neurologically intact and her reflexes were okay. Appellant did not complain of any tingling in her arms. Dr. Wener concluded that the right shoulder strain she suffered on May 26, 2006 had resolved noting that the type of shoulder strain she suffered would usually resolve in six to eight months. Appellant had good range of motion of her right shoulder and her subjective

complaints were somewhat outweighed by the objective findings on examination. Dr. Wener noted that her low back and right leg problems were not related to the May 26, 2006 work injury as these complaints did not arise until after May 26, 2006.² He stated, “I believe that [appellant] can work full duty with respect to the diagnosis of right shoulder strain.” In a work restriction form, Dr. Wener advised that she could perform her regular work on a full-time basis without restrictions. He stated, “full duty with respect to right shoulder.”

In a supplemental June 14, 2011 report, Dr. Wener opined that any possible aggravation of appellant’s preexisting degenerative arthritis of the cervical spine had resolved. He also noted that, although she had the condition of right carpal tunnel syndrome, it probably preexisted the right shoulder strain and was not related to the accepted injury.

In a July 6, 2011 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits because she ceased to have residuals of her May 26, 2006 work injury.³ It stated that the weight of the medical evidence rested with the well-rationalized opinion of Dr. Wener, the impartial medical specialist. OWCP provided appellant 30 days from the date of the letter to submit evidence or argument challenging the proposed termination. Appellant did not respond.

In an August 9, 2011 decision, OWCP terminated appellant’s compensation effective July 31, 2011 finding that she had no residuals of her May 26, 2006 work injury.

LEGAL PRECEDENT

Once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁴ It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ OWCP’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

Section 8123(a) of FECA provides in pertinent part: “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.”⁷ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is

² Dr. Wener also indicated that appellant “probably had temporary aggravation of her mild cervical degenerative disc.”

³ OWCP initially produced a June 22, 2011 letter of proposed termination but sent it to an incorrect address as appellant had moved. It sent the July 6, 2011 letter to her new address of record and she advised OWCP that she had received the letter.

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ 5 U.S.C. § 8123(a).

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.⁸

ANALYSIS

OWCP accepted that on May 26, 2006 appellant sustained a right shoulder strain due to lifting heavy sacks of mail. Appellant stopped work and received compensation for periods of disability. OWCP terminated her wage-loss compensation and medical benefits effective July 31, 2011 based on the opinion of Dr. Wener, a Board-certified orthopedic surgeon, who served as an impartial medical specialist.

OWCP properly determined that there was a conflict in the medical opinion evidence between Dr. Doman, a Board-certified orthopedic surgeon serving as an OWCP referral physician, and Dr. Whitehead, an attending Board-certified internist, on the issue of whether appellant continued to have residuals of the May 26, 2006 work injury.⁹ In order to resolve the conflict, OWCP properly referred her, pursuant to section 8123(a) of FECA, to Dr. Wener, for an impartial medical examination and an opinion on the matter.¹⁰

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Wener, the impartial medical specialist selected to resolve the conflict in the medical opinion.¹¹ The April 4 and June 14, 2011 reports of Dr. Wener establish that appellant had no residuals of her May 26, 2006 work injury after July 31, 2011.

Upon physical examination, Dr. Wener found that appellant had full range of motion of both shoulders and that her upper extremities were neurologically intact. He concluded that the right shoulder strain she sustained on May 26, 2006 had resolved. Dr. Wener further advised that appellant's low back and right leg problems were not related to the May 26, 2006 work injury as these complaints did not arise until after May 26, 2006. He found that she could work full duty with respect to the diagnosis of right shoulder strain. In a June 14, 2011 report, Dr. Wener further opined that appellant did not have any work-related cervical or right carpal tunnel condition due to the accepted injury.

The Board has carefully reviewed the opinion of Dr. Wener and finds that it has reliability, probative value and convincing quality with respect to the physicians conclusions regarding the issue of the present case. Dr. Wener provided a thorough factual and medical history and accurately summarized the relevant medical evidence.¹² He provided medical

⁸ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁹ In an October 21, 2010 report, Dr. Doman concluded that appellant's accepted work injury of right shoulder strain had resolved. In contrast, Dr. Whitehead indicated that she had permanent work restrictions due to her May 26, 2006 work injury.

¹⁰ *See supra* note 7.

¹¹ *See supra* note 8.

¹² *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

rationale for his opinion by explaining that the type of shoulder strain appellant suffered on May 26, 2006 would usually resolve in six to eight months. Dr. Wener noted that she had good range of motion of her right shoulder and indicated that her subjective complaints were outweighed by the objective findings on examination which did not show any current right shoulder strain. He further explained that appellant's cervical, right carpal tunnel, back and right leg problems were not related to the May 26, 2006 work injury.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective July 31, 2011 on the grounds that she had no residuals of her May 26, 2006 work injury after that date.

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 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