United States Department of Labor
Employees' Compensation Appeals Board

A.R., Appellant	)	
and	)	**Docket No. 12-443**
	)	**Issued: October 9, 2012**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Waco, TX, Employer	)	

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
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 29, 2011 appellant, through his attorney, filed a timely appeal of a September 27, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective October 23, 2011.

FACTUAL HISTORY

On July 22, 2009 appellant, then a 49-year-old mail processing clerk, injured his neck and left shoulder while in the performance of duty. He stopped work on December 7, 2009 and did not return. A November 16, 2009 cervical magnetic resonance imaging (MRI) scan obtained

[1] 5 U.S.C. § 8101 *et seq.*

by Dr. Fred H. Rader Jr., a Board-certified diagnostic radiologist, exhibited anterior plating at C4, C5 and C6 with intervening complete disc interspace obliteration, mild C3-4 stenosis related to diffuse disc bulging and ligamentum flavum hypertrophy and moderate C6-7 stenosis with left paracentral disc protrusion. A December 18, 2009 left shoulder MRI scan conducted by Dr. Jose A. Watson, a Board-certified diagnostic radiologist, showed possible articular surface tearing at the insertion of the infraspinatus tendon, degenerative or intraosseous ganglion cyst in the greater humeral tuberosity and fluid in the subacromial subdeltoid bursa suggestive of minimal bursitis. OWCP accepted appellant's traumatic injury claim for neck sprain, cervical intervertebral disc displacement and left rotator cuff syndrome and paid disability benefits accordingly.[2]

In an April 6, 2010 letter, OWCP asked Dr. Juan C. Yabraian, an orthopedic surgeon and appellant's attending physician, to provide an opinion regarding appellant's return to full-time modified duty. In a May 5, 2010 work capacity evaluation form, Dr. Yabraian checked the "no" box in response to a form question asking whether appellant was capable of performing regular job functions. He reiterated his opinion in June 3 and August 26, 2010 duty status reports. In a June 24, 2010 electromyogram (EMG) and nerve conduction study, Dr. Meyer L. Proler, a clinical neurophysiologist, observed acute left C6 cervical radiculopathy as well as evidence of left ulnar and radial mononeuropathy of uncertain etiology.

OWCP referred appellant for a second opinion examination to Dr. Terry J. Beal, a Board-certified orthopedic surgeon. In an August 25, 2010 report, Dr. Beal reviewed the medical file and conducted a physical evaluation. He observed left palmar hypesthesia and limited cervical and thoracic range of motion (ROM). Dr. Beal concluded that appellant's neck sprain and left rotator cuff syndrome resolved. He added that the ongoing cervical symptoms were related to a motor vehicle accident in 1999 as well as the July 22, 2009 work injury. Dr. Beal recommended sedentary duty.

OWCP found that a conflict in medical opinion existed between Dr. Yabraian and Dr. Beal as to whether appellant remained disabled as a result of his accepted employment condition or whether his condition resolved. It referred appellant for a referee examination to Dr. O. Doak Raulston, Jr., a Board-certified orthopedic surgeon.

In a November 15, 2010 report, Dr. Raulston inspected the medical file and noted that appellant underwent anterior cervical fusion in May 1999 and thoracic disc shaving surgery in November 1999 due to a motor vehicle accident.[3] On examination, he observed left lateral shoulder and trapezius tenderness and diminished cervical and left shoulder ROM. Other musculoskeletal and neurological findings were unremarkable. Dr. Raulston diagnosed cervical radiculitis and concluded that appellant's left rotator cuff syndrome resolved, citing "no objective residuals." Concerning the C6-7 protrusion and stenosis demonstrated by the November 16, 2009 MRI scan, he opined that the condition was caused by the previous motor

[2] The foregoing information was incorporated into the May 19, 2010 statement of accepted facts. Appellant also filed a notice of recurrence on May 24, 2011, which is not presently before the Board.

[3] Dr. Raulston did not indicate that he reviewed the May 19, 2010 statement of accepted facts.

vehicle accident. Dr. Raulston discharged appellant to six months of full-time sedentary duty effective November 16, 2010.

On January 11, 2011 Dr. David O. Risinger, a Board-certified diagnostic radiologist, conducted MRI scans of the neck and left shoulder and observed T2-3 paracentral disc protrusion, multilevel thoracic discogenic disease, abnormal left brachial plexus and other findings that were consistent with the November 16 and December 18, 2009 MRI scan results. A February 8, 2011 EMG and nerve conduction study conducted by Dr. Praveen K. Thangada, a neurologist, noted evidence of acute bilateral C6-7 cervical radiculopathy. In a March 23, 2011 report, Dr. Leslie W. Benson, an emergency physician, disagreed with Dr. Raulston's November 15, 2010 opinion. Citing the January and February 2011 diagnostic findings, he concluded that appellant was physically incapable of returning to work because the accepted condition did not resolve and his symptoms significantly worsened.

In a letter dated August 16, 2011, OWCP notified appellant of its proposal to terminate his wage-loss compensation and medical benefits on the grounds that he no longer had any disability or residuals due to an industrial injury. It gave him 30 days to submit additional argument or evidence.

Thereafter, appellant provided new evidence. On September 15, 2011 Dr. Gregory J. Bathurst, a Board-certified diagnostic radiologist, conducted MRI scans of the neck and left shoulder. He observed cervical disc protrusions and ligamentum flavum hypertrophy above and below C3-4 and C6-7, moderate central canal stenosis and foraminal narrowing, equivocal cervical spinal cord signal abnormality possibly related to myelomalacia, greater tuberosity subcortical cyst and possible small undersurface tearing near the supraspinatus insertion and nonspecific rounded T2 hyperintensity of the left anterior axillary region of uncertain etiology. In a September 15, 2011 report, Dr. Benson noted reviewing diagnostic test findings and reiterated his disagreement with Dr. Raulston's opinion.[4]

By decision dated September 27, 2011, OWCP finalized the termination of wage-loss compensation and medical benefits effective October 23, 2011.[5]

LEGAL PRECEDENT

Once OWCP has accepted a claim, it has the burden of justifying termination or modification of compensation benefits,[6] which includes furnishing rationalized medical opinion

[4] The case record also contains numerous form reports from Dr. Benson for the period January 6, 2010 to July 20, 2011.

[5] The case record shows that the employing establishment offered appellant the full-time position of modified mail processing clerk on January 21, 2011. In a February 10, 2011 letter, OWCP afforded appellant 30 days to accept the job offer without penalty or provide an explanation justifying his refusal. Appellant did not respond. OWCP gave him an additional 15 days to accept the offer in a March 11, 2011 letter. On March 16, 2011 appellant informed the employing establishment that he would report for duty on March 21, 2011. However, the employing establishment withdrew the offer on administrative grounds following a February 23, 2011 labor arbitration decision.

[6] *I.J.*, 59 ECAB 408 (2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

evidence based on a proper factual and medical background.[7] Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability ceased or was no longer related to the employment.[8] The right to medical benefits for an accepted condition, on the other hand, is not limited to the period of entitlement to disability compensation. 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.[9]

If there is a conflict in medical opinion between the employee's physician and the physician making the examination for the United States, OWCP shall appoint a third physician, known as a referee physician or impartial medical specialist, to make what is called a referee examination.[10] Where OWCP has referred appellant to a referee physician to resolve a conflict, the referee's opinion, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[11]

ANALYSIS

OWCP accepted that appellant sustained work-related neck sprain, cervical intervertebral disc displacement and left rotator cuff syndrome on July 22, 2009. Dr. Yabraian, his attending physician, opined in a May 5, 2010 work capacity evaluation form and June 3 and August 26, 2010 duty status reports that he was totally disabled. On the other hand, Dr. Beal, the second opinion examiner, concluded in an August 25, 2010 report that appellant's accepted condition resolved. OWCP determined that a conflict in medical opinion existed and appointed Dr. Raulston as an impartial medical specialist.

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits. As noted, the report of an impartial medical specialist will be accorded special weight upon review by the Board, provided that the report is sufficiently rationalized and based upon a proper factual background. In particular, the Board looks at such factors as the opportunity for and thoroughness of examination performed by the physician, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed by the physician on the medical issues addressed to him by OWCP.[12] In his November 15, 2010 report, Dr. Raulston reviewed the medical file, examined appellant and diagnosed nonindustrial cervical radiculitis, which he attributed to a November 1999 motor vehicle accident. He concluded that appellant's left rotator cuff syndrome resolved because there were "no objective residuals." Dr. Raulston added that appellant was capable of performing full-time sedentary work as of

[7] *D.C.*, Docket No. 09-1070 (issued November 12, 2009); *Larry Warner*, 43 ECAB 1027 (1992).

[8] *I.J.*, *supra* note 6.

[9] *L.G.*, Docket No. 09-1692 (issued August 11, 2010); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[10] *See* 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321.

[11] *L.W.*, 59 ECAB 471 (2007); *James P. Roberts*, 31 ECAB 1010 (1980).

[12] *James T. Johnson*, 39 ECAB 1252, 1256 (1988).

November 16, 2010. His brief opinion, however, cannot be accorded special weight because he did not present adequate medical rationale or an otherwise detailed analysis.[13] Dr. Raulston did not provide reasoning to support his conclusory statements about appellant's condition. Since his report was insufficient to resolve the medical conflict, the Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits.

CONCLUSION

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits effective October 23, 2011.

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2011 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 9, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[13] *See, e.g., Riley E. Harris*, Docket No. 94-2355 (issued September 5, 1995). The Board also points out that Dr. Raulston did not appear to review the May 19, 2010 statement of accepted facts, which further diminished the probative value of his report. *See A.R.*, Docket No. 11-692 (issued November 18, 2011); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).