

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

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<b>M.H., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 12-1865</b>
	)	<b>Issued: April 1, 2013</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, Columbia, SC, Employer</b>	)	
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*Appearances:*

*Paul H. Felser, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 10, 2012 appellant, through her attorney, filed a timely appeal of a May 25, 2012 Office of Workers' Compensation Programs' (OWCP) merit decision terminating her 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 to consider the merits of the case.

**ISSUE**

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective October 14, 2011.

On appeal counsel argued that the report of the impartial medical examiner was not sufficiently detailed and well reasoned to constitute the weight of the medical opinion evidence.

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

## **FACTUAL HISTORY**

On March 12, 2008 appellant, then a 61-year-old rural letter carrier, filed an occupational disease claim alleging that she developed a shoulder and neck condition due to her employment duties. In a report dated July 3, 2008, Dr. Richard W. Ward, a Board-certified orthopedic surgeon, stated that, due to the repetitive nature of lifting at work, appellant had developed symptoms in both shoulders as well as in her neck. On August 7, 2008 he stated that appellant had shoulder and neck discomfort. Dr. Ward diagnosed partial rotator cuff tear on the left with rotator cuff tendinosis or the right, cervical disc disease and radiculopathy of the right upper extremity. He opined that appellant's work caused her rotator cuff pathology. Appellant underwent a magnetic resonance imaging (MRI) scan on May 8, 2008 which demonstrated rotator cuff tendinosis and rotator cuff tears. OWCP accepted her claim for bilateral rotator cuff syndrome on October 9, 2008.

OWCP referred appellant for a second opinion examination with Dr. Robert M. Moore, a Board-certified orthopedic surgeon, to determine her work restrictions due to her accepted conditions. Due to a conflict between Dr. Ward who opined that appellant could not work and Dr. Moore, who opined on April 13, 2010 that she could perform as a modified rural carrier with restrictions, OWCP referred appellant to Dr. Bright McConnell, a Board-certified orthopedic surgeon, who agreed that appellant could work, but continued to experience limiting residuals on the right.

After additional development of the medical evidence, Dr. Ward performed an arthroscopic subacromial decompression with partial anterior acromionectomy and distal clavicle complaining of the left shoulder on October 27, 2008 due to partial thickness rotator cuff tear with impingement syndrome. On August 9, 2010 appellant underwent right shoulder arthroscopy with subacromial decompression and partial anterior acromionectomy, partial distal clavicle resection and arthroscopic rotator cuff repair.

In a note dated September 9, 2010, Dr. Ward stated that appellant's postoperative course was progressive and that her range of motion and strength were gradually improving. He stated that appellant would be out of work for several months. OWCP requested additional information from Dr. Ward on October 27, 2010. Dr. Ward did not respond.

OWCP referred appellant for a second opinion evaluation on December 8, 2010. In connection with her second opinion evaluation, appellant underwent electromyography (EMG) and nerve conduction studies on January 4, 2011 which demonstrated left cervical radiculopathy possibly at C4.

Appellant also underwent a functional capacity evaluation on January 4, 2011. This testing found that she could performed in the sedentary range due to limited dynamic strength. Appellant had decreased muscle strength in the bilateral upper extremities, decreased range of motion in the bilateral shoulders and cervical region and pain in the shoulders, hands and knees. The function capacity evaluation demonstrated that she could perform at the sedentary level.

In a report dated January 5, 2011, Dr. James A. Maultsby, a Board-certified orthopedic surgeon, performed a second opinion evaluation noting appellant's history of injury and medical

history. He found that the range of motion in appellant's upper extremities was variable with passive range of motion almost 40 to 50 percent greater than active range of motion. Dr. Maultsby found no impingement signs with good to excellent strength in her upper extremities. He noted that appellant underwent an EMG which demonstrated left cervical radiculitis. Dr. Maultsby stated that some of appellant's shoulder symptoms were likely due to her cervical spine condition. He reviewed the functional capacity evaluation which demonstrated that appellant was capable of returning to sedentary work, due to problems with her neck, hands and knees due to degenerative arthritis. Dr. Maultsby stated that appellant had no objective residuals of her accepted bilateral rotator cuff condition. He concluded that appellant could not return to her date-of-injury position due to her nonemployment-related conditions of arthritis in the neck and knees.

Dr. Ward reviewed the functional capacity evaluation and stated that appellant could not return to her date-of-injury position.

Dr. Alfred Dawson, a Board-certified orthopedic surgeon, performed an impartial medical examination on March 10, 2011. He reviewed the statement of accepted facts as well as the medical records and performed a physical examination finding limited range of motion in the shoulders with negative acromional compression. Dr. Dawson reported limited range of motion of the neck with no cervical spasm. He diagnosed cervical disc disease, left cervical radiculopathy, degenerative arthritis of the cervical and lumbar spine and status post bilateral shoulder impingement. Dr. Dawson stated that appellant had a small residual of her accepted employment injuries in the form of limited forward flexion of both shoulders. He opined that she did not need further medical treatment for her accepted shoulder conditions. Dr. Dawson concluded that most of appellant's disability was related to degenerative arthritis and disc disease of the cervical and lumbar spine as well as hand arthritis. He found that she could not perform her date-of-injury position due to her nonemployment-related neck condition. Dr. Dawson determined that appellant's employment-related conditions had totally resolved, but repeated that she had a small residual to both shoulders. He stated that most of her impairment rating was due to the aging process and not her work injury.

In his May 18, 2011 response to a request for a supplemental report from OWCP, Dr. Dawson opined that appellant's shoulder conditions had resolved and she did not need further treatment.

In a letter dated August 29, 2011, OWCP proposed to terminate appellant's compensation and medical benefits based on Dr. Dawson's reports. Dr. Ward completed a note on September 8, 2011 and stated that appellant had no change in her status and that her work level should be sedentary. In a report dated September 9, 2011, he stated that appellant's accepted injury-related condition was still medically present and disabling. Dr. Ward stated that appellant could perform sedentary work.

Appellant responded to the proposed termination on September 26, 2011 and reviewed the medical evidence. She noted that Dr. Dawson reported a small residual in the form of limited forward flexion of both shoulders.

By decision dated October 14, 2011, OWCP terminated appellant's compensation and medical benefits finding that Dr. Dawson's reports represented the weight of the medical opinion evidence.

Appellant requested an oral hearing on October 24, 2011 before an OWCP hearing representative. Counsel appeared at the oral hearing on February 24, 2012 and argued that appellant's neck condition was due to her employment and should be accepted. He alleged deficiencies in Dr. Dawson's reports and the statement of accepted facts. Following the oral hearing, appellant's counsel submitted additional argument. He alleged that OWCP failed to develop appellant's claim for neck injury as related to her accepted employment activities.

By decision dated May 25, 2012, OWCP's hearing representative found that Dr. Dawson's report was entitled to the weight of the medical evidence. She found that this report established that appellant had no remaining work-related disability or residuals and that Dr. Dawson established that appellant's shoulder condition was not due to her employment. The hearing representative concluded that OWCP had met its burden of proof to terminate appellant's compensation for disability and medical benefits.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>2</sup> After it has determined that an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>3</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>4</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>5</sup>

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of FECA which 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 and resolve the conflict of medical evidence.<sup>6</sup> 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>

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<sup>2</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>3</sup> *Id.*

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>5</sup> *Id.*

<sup>6</sup> 5 U.S.C. §§ 8101-8193, 8123; *B.C.*, 58 ECAB 111 (2006); *M.S.*, 58 ECAB 328 (2007).

<sup>7</sup> *R.C.*, 58 ECAB 238 (2006).

In situations where there are 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 on a proper factual background, must be given special weight.<sup>8</sup>

## ANALYSIS

Following appellant's right shoulder surgery, on September 9, 2010, Dr. Ward stated that appellant would be out of work for several months. He did not respond to OWCP's request for additional information on October 27, 2010. OWCP referred appellant for a second opinion evaluation on January 5, 2011 with Dr. Maultsby who opined that some of appellant's shoulder symptoms were likely due to her cervical spine condition. Dr. Maultsby stated that appellant had no objective residuals of her accepted bilateral rotator cuff condition and concluded that appellant could not return to her date-of-injury position due to her nonemployment-related conditions of arthritis in the neck and knees. Dr. Ward reviewed the functional capacity evaluation and stated that appellant could not return to her date-of-injury position. Due to the disagreement between Drs. Ward and Maultsby regarding the nature and extent of appellant's employment-related condition and disability for work, the Board finds that OWCP properly determined that there was a conflict of medical opinion evidence and referred appellant to Dr. Dawson, for an impartial medical examination, pursuant to 5 U.S.C. § 8123(a).

Dr. Dawson examined appellant on March 10, 2011 after reviewing the statement of accepted facts. On examination he found limited range of motion in the shoulders. Dr. Dawson diagnosed cervical disc disease, left cervical radiculopathy, degenerative arthritis of the cervical and lumbar spine and status post bilateral shoulder impingement. He stated that appellant had a small residual of her accepted employment injuries in the form of limited forward flexion of both shoulders. Dr. Dawson stated that appellant did not need further medical treatment for her accepted shoulder conditions. He opined that most of appellant's disability was related to degenerative arthritis and disc disease of the cervical and lumbar spine as well as hand arthritis. Dr. Dawson found that appellant could not perform her date-of-injury position due to her nonemployment-related neck condition. He concluded that appellant's employment-related conditions had totally resolved. In response to a request for a supplemental report from OWCP, Dr. Dawson opined that appellant's shoulder conditions had resolved and she did not need further treatment.

The Board finds that Dr. Dawson's report is sufficiently detailed and well reasoned to meet OWCP's burden of proof to terminate appellant's compensation and medical benefits. He opined that appellant did not require further treatment for her accepted conditions and that her accepted conditions had totally resolved. Dr. Dawson stated that appellant's current disability was due to her neck condition. In response to a request for clarification from OWCP, he again stated that appellant's shoulder condition had resolved and did not require further medical treatment. As Dr. Dawson's reports clearly state that appellant has no residuals or disability due to her accepted conditions, these reports are sufficiently detailed and well reasoned to constitute

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<sup>8</sup> *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

the special weight of the medical opinion evidence. OWCP has met its burden of proof to terminate appellant's compensation and medical benefits.<sup>9</sup>

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 to terminate appellant's wage-loss compensation and medical benefits.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 25, 2011 is affirmed.

Issued: April 1, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>9</sup> Due to the disposition of the primary issue of the case, the Board will not address appellant's contentions that OWCP should have accepted additional conditions as due to her employment. Appellant may pursue this aspect of her claim before OWCP.