



## **FACTUAL HISTORY**

OWCP accepted that on October 24, 2005 appellant, then a 32-year-old letter carrier, sustained rotator cuff tendinitis and a partial rotator cuff tear of her right shoulder due to lifting mail out of a container. Appellant began working in a limited-duty position and received medical benefits and compensation for periods of disability.

On May 3, 2006 Dr. Keith P. Johnson, an attending Board-certified orthopedic surgeon, performed right shoulder surgery, including an arthroscopy, subacromial decompression with bursectomy and slight debridement and debridement of rotator cuff tendon. On December 18, 2007 he performed additional right shoulder surgery, including arthroscopy, debridement of rotator interval, revision subacromial decompression/bursectomy and distal clavicle excision. These procedures were authorized by OWCP.

In a December 5, 2011 report, Dr. Leon Sultan, a Board-certified orthopedic surgeon serving as an OWCP referral physician, described appellant's medical history, including the history of her October 24, 2005 work injury and subsequent treatment. Appellant complained of experiencing right shoulder pain for up to 14 hours a day. Dr. Sultan stated that, on examination of the right shoulder, he observed scars of a well-healed arthroscopic puncture wound and that there was no deltoid muscle atrophy on the right side when compared to the left side. On range of motion testing of appellant's right shoulder, right shoulder abduction and forward elevation was at 175 degrees (normal being 170 to 180 degrees), internal rotation was complete and external rotation was to 45 degrees (normal 40 to 50 degrees). Adduction was to 45 degrees (normal 45 to 50 degrees) and posterior extension was to 40 degrees (normal 40 to 45 degrees). Dr. Sultan noted that appellant complained of right shoulder pain at the endpoint of motion testing, but he detected no reactionary muscle spasm or any resistance to range of motion testing. Equal range of motion findings were noted on the opposite side and the right shoulder impingement, Hawkin's and drop arm tests were normal. Dr. Sultan indicated that sensory testing of the right upper extremity was intact, that there was a firm grip on the right side and that pinch mechanism was well preserved. He concluded that there were no objective positive examination findings with respect to appellant's right shoulder and that the examination did not confirm that she was suffering from any disabling residuals of the accepted conditions. Dr. Sultan stated, "Today's objective examination in regards to this woman's right shoulder does not confirm any current disability in regards to the employment injury of October 24, 2005 nor is there any orthopedic disability not related to the employment injury of October 24, 2005." He advised that there were no physical limitations on appellant's work as a letter carrier with respect to her October 24, 2005 work injury. Dr. Sultan stated that she did not require any further treatment for her right shoulder condition.<sup>2</sup>

In a January 16, 2012 report, Dr. Johnson noted that appellant presented for an examination on that date.<sup>3</sup> He stated that she had tightness of her right shoulder both when raising it maximally overhead and behind her back. When appellant rotated her right arm

---

<sup>2</sup> Dr. Sultan indicated that appellant could occasionally handle 50 to 100 pounds. In a December 5, 2011 work restrictions form, he stated that she did not have any work restrictions related to her right shoulder condition.

<sup>3</sup> Dr. Johnson indicated that he last saw appellant in 2008.

outwardly at times she felt a sharp catching sensation and pain, although the pain was not strong and went away. The clinical appearance of the right shoulder was benign and forward elevation of the right shoulder was to 160 to 170 degrees versus full motion on the left. Appellant's external rotation was symmetric at 60 degrees and her internal rotation was approximately one or two vertebral levels less, right versus left. She had discomfort at the end range of forward elevation and internal rotation. There was discomfort to palpation over the biceps tendon proximally, but appellant was nontender over the acromioclavicular joints. Dr. Johnson diagnosed right shoulder impingement, mild right shoulder posterior capsular tightness, proximal biceps tendinitis/tendinosis and status arthroscopic surgery times two. He discussed appellant's May 3, 2006 and December 18, 2007 surgeries due to the October 24, 2005 work injury and stated:

“[Appellant] had partial improvement with these operations but was left with end-range loss of motion to forward elevation and internal rotation, and has had continued subjective complaints of pain. She has never had follow-up imaging tests performed. May consider follow-up [magnetic resonance imaging] and/or examination under ultrasound and may also consider repeat trial of pain injections with anesthetic and plus/minus cortisone. At present, however, I do not see the patient again as a potential operative candidate. Previously given limitations to avoid pulling and overhead lifting, I would recommend continuing, these are indefinite recommendations.”

In a February 9, 2012 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits on the grounds that she ceased to have residuals of her October 24, 2005 work injury. It found that the December 5, 2011 report of Dr. Sultan established that she ceased to have residuals of her October 24, 2005 work injury. OWCP noted that the January 16, 2012 report of Dr. Johnson was not well rationalized. Appellant was advised that she had 30 days from the date of the letter to submit evidence and argument contesting the proposed termination action.

In a March 16, 2012 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective March 16, 2012 on the grounds that she had no residuals of her October 24, 2005 work injury. It found that the weight of the medical evidence regarding continuing work-related residuals rested with the December 5, 2011 opinion of Dr. Sultan.

Appellant submitted a follow-up letter from Dr. Johnson dated January 16, 2012. Dr. Johnson summarized some of the findings of his January 16, 2012 examination which were contained in his previously submitted report and indicated that she had the same findings in 2008. He stated:

“Within a reasonable probability of medical certainty, I do feel that [appellant's] injury and surgery has left her with a permanent functional deficit, in the right shoulder, I had previously stated that returning to work that involves lifting and pulling especially overhead is likely to be poorly tolerated and only give additional symptoms. I continue to feel that this is true. [Appellant] may perform work for which this is not a requirement.”

In a July 22, 2012 decision, OWCP denied modification of its March 16, 2012 termination of appellant's wage-loss compensation and medical benefits. It found that the January 16, 2012 follow-up report of Dr. Johnson was not well rationalized.

In an August 27, 2012 note, Dr. Johnson discussed the right shoulder surgeries he performed on May 3, 2006 and December 18, 2007. He stated that both of these surgical procedures involved removal of damaged tissue which could not be replaced. Dr. Johnson stated, "Given that fact, high-demand activities on the shoulder with respect to pulling and lifting, especially overhead, may be poorly tolerated and these functional limitations would be permanent."

In a February 1, 2013 decision, OWCP denied modification of its July 22, 2012 decision, noting that it had properly terminated appellant's wage-loss compensation and medical benefits effective March 16, 2012 and that she had not shown that she had work-related residuals after that date.

### **LEGAL PRECEDENT**

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>4</sup> OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>5</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

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."<sup>7</sup>

### **ANALYSIS**

OWCP accepted that on August 4, 2005 appellant sustained rotator cuff tendinitis and a partial rotator cuff tear of her right shoulder due to lifting mail out of a container. On May 3, 2006 Dr. Johnson, an attending Board-certified orthopedic surgeon, performed right shoulder surgery, including an arthroscopy, subacromial decompression with bursectomy and slight debridement and debridement of rotator cuff tendon. On December 18, 2007 he performed additional right shoulder surgery, including arthroscopy, debridement of rotator interval, revision subacromial decompression/bursectomy and distal clavicle excision. These procedures were authorized by OWCP.

---

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

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

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

<sup>7</sup> 5 U.S.C. § 8123(a).

OWCP terminated appellant's wage-loss compensation and medical benefits effective March 16, 2012 on the grounds that she had no residuals of her October 24, 2005 work injury after that date. It found that the weight of the medical evidence regarding continuing work-related residuals rested with the December 5, 2011 opinion of Dr. Sultan, a Board-certified orthopedic surgeon serving as an OWCP referral physician.

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective March 16, 2012. There is a conflict in medical opinion evidence regarding the residuals of appellant's October 24, 2005 work injury.

In a December 5, 2011 report, Dr. Sultan stated that, on range of motion testing of appellant's right shoulder, right shoulder abduction and forward elevation was at 175 degrees (normal being 170 to 180 degrees), internal rotation was complete and external rotation was to 45 degrees (normal 40 to 50 degrees). Adduction was to 45 degrees (normal 45 to 50 degrees) and posterior extension was to 40 degrees (normal 40 to 45 degrees). Dr. Sultan indicated that appellant complained of right shoulder pain at the endpoint of motion testing, but noted that he detected no reactionary muscle spasm or any resistance to range of motion testing. He stated that there were no objective positive examination findings with respect to her right shoulder and that the examination did not confirm that she was suffering from any disabling residuals of the accepted conditions. Dr. Sultan indicated that there were no physical limitations on appellant's work as a letter carrier with respect to her October 24, 2005 work injury and noted that she did not require any further treatment for her right shoulder condition.

Dr. Johnson, the physician who performed the authorized right shoulder surgeries of May 3, 2006 and December 18, 2007, stated in a January 16, 2012 report that appellant had continuing limitations and disability due to these work-related surgeries. On examination, on January 16, 2012 appellant experienced a sharp catching sensation and pain when she rotated her right arm outwardly. Dr. Johnson indicated that forward elevation of her right shoulder was to 160 to 170 degrees, versus full motion on the left and that appellant had discomfort at the end range of forward elevation and internal rotation. He diagnosed right shoulder impingement, mild right shoulder posterior capsular tightness, proximal biceps tendinitis/tendinosis and status arthroscopic surgery times two. Dr. Johnson discussed appellant's May 3, 2006 and December 18, 2007 surgeries and stated, "[Appellant] had partial improvement with these operations but was left with end-range loss of motion to forward elevation and internal rotation and has had continued subjective complaints of pain."<sup>8</sup>

The Board finds a conflict in medical opinion between Dr. Sultan, the second opinion physician and Dr. Johnson, the treating physician, as to appellant's residuals due to her October 24, 2005 work injury. Therefore, OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective March 16, 2012.

---

<sup>8</sup> Appellant later submitted January 16 and August 27, 2012 documents in which Dr. Johnson provided a similar opinion on appellant's continuing work-related residuals.

**CONCLUSION**

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective March 16, 2012.<sup>9</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 1, 2013 decision of the Office of Workers' Compensation Programs is reversed.

Issued: July 10, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>9</sup> In view of the Board's disposition of the first issue, the second issue is moot.