

FACTUAL HISTORY

On August 30, 1977 appellant, then a 30-year-old pipefitter, filed a traumatic injury claim (Form CA-1) alleging that on August 24, 1977 he sustained a left shoulder injury from lifting a desk. OWCP accepted the claim for strain of left shoulder and upper arm.

Appellant received intermittent compensation for continuation of pay (COP) from August 30 to November 17, 1977 and temporary total disability compensation from November 18, 1977 to May 10, 1978. On May 8, 1978 he was released from his treating physician Dr. Wagdi Faris, a Board-certified orthopedic surgeon, with restrictions to his left arm. On February 15, 1979 appellant's compensation benefits were reduced and he began receiving wage-earning capacity (WEC) for \$136.40 per week.

OWCP referred appellant to Dr. James F. Richard, Jr., a Board-certified orthopedic surgeon, for an independent medical examination to determine if his condition continued to support entitlement to WEC benefits. In a September 4, 1985 report, Dr. Richards stated that appellant did not require restrictions for sitting, walking, bending, squatting, kneeling, twisting and standing, but could not repetitively lift over 20 pounds, reach over head, climb or push and pull heavy weights. He opined that appellant had long reached maximum medical improvement (MMI) and could work eight hours a day. As a result of Dr. Richard's September 4, 1985 report, OWCP finalized an actual earnings wage-earning decision on May 12, 1980 based on appellant's ability to perform his duties as a mobile home repairman.

In an October 10, 1989 follow-up examination report, Dr. Richards provided appellant with the same work restrictions, noting that he could work eight hours a day and recommended no additional treatment. Dr. Richards further noted that appellant could have mild cervical arthritis and chronic rotator cuff tendinitis. A March 6, 1992 report from him stated that appellant was not a candidate for vocational rehabilitation services. Dr. Richards found that appellant could not work as a pipefitter because he weighed 260 pounds and would have difficulty fitting into tight spots as well as reaching overhead and out at arm's length.

In medical reports dated October 10, 2006 to March 23, 2009, Dr. Rodney A. Marcom, a Board-certified osteopath, reported that appellant was injured in an employment-related incident. In his May 2, 2007 report, he opined that appellant incurred a five percent permanent impairment and that no significant changes or improvement were expected in the future, providing appellant with work restrictions. In an April 9, 2008 medical report, Dr. Marcom opined that appellant could return to work. In a March 23, 2009 report, he stated that appellant continued to experience increased pain and debility with complaints of spasms, weakness and difficulty using his dominant left hand and upper extremity from his past injury. Dr. Marcom noted that appellant's symptoms had become more pronounced since his evaluation the prior year. He opined based on review of medical records and physical examination, that appellant had a permanent impairment of five percent, was not expected to improve in the future and was capable of working with work restrictions of no heavy lifting, bending, stooping, reaching overhead and pushing and pulling heavy objects. Thus, Dr. Marcom noted that there was no change in appellant's physical findings during his updated March 23, 2009 examination and that he could perform his duties as a mobile home repairmen as long as there were no assignments for heavy labor.

On September 6, 2011 OWCP referred appellant, a statement of accepted facts, the case file and a series of questions to Dr. Steven Nadler, a Board-certified orthopedic surgeon, for a second opinion medical examination. The statement of accepted facts (SOAF) noted that appellant's claim was accepted for strain of left shoulder from an August 24, 1977 employment incident where he was lifting a desk. It further stated that the physical requirements of a pipefitter included frequent pushing, pulling, kneeling, bending, squatting, crawling, sitting, lying, stooping, climbing, prolonged walking, standing, working for prolonged periods with arms overheard, working on staging, confined quarters and cramped positions. The SOAF also noted that he must be able to lift 50 pounds and sometimes in excess of 50 pounds. Dr. Nadler was asked to provide an opinion on whether appellant's accepted condition had been resolved and whether he could perform his date-of-injury job. It further noted that he should use the SOAF as the only factual framework for his opinion.

In an October 18, 2011 medical report, Dr. Nadler reported that appellant complained of left shoulder pain from an August 24, 1977 work-related injury. Appellant stated that he had been living with the pain for approximately 35 years but never received any treatment for his condition. After the employment injury, he stopped working as a pipefitter and worked fixing mobile homes. Dr. Nadler provided a summary of appellant's previous medical reports and history. He noted a May 1978 medical report from Dr. Faris who reported that appellant had a sprain of the left shoulder secondary to inflammatory changes. In an April 4, 1978 medical report, Dr. Faris stated that appellant could have thoracic outlet syndrome and impingement syndrome. Upon physical examination, Dr. Nadler noted that the left shoulder revealed no signs of trauma. Appellant had mild discomfort in the acromioclavicular joint and subacromial space. Dr. Nadler stated that appellant's range of motion was good but that there were mild signs of impingement syndrome. He diagnosed status post left shoulder sprain with secondary impingement syndrome and answered "yes" in response to whether appellant's accepted condition had resolved. Dr. Nadler further stated that appellant could perform his date-of-injury job as a pipefitter because his condition had resolved and his present symptoms were most probably related to impingement syndrome, which developed over a period of years but was not related to his injury at work. In a work capacity evaluation of the same date, he stated that appellant had no limitations as a result of his work accident in 1977.

On May 30, 2012 OWCP notified appellant of a proposal to terminate his compensation benefits and modify his loss of wage-earning capacity to zero based on Dr. Nadler's opinion that appellant was not experiencing any residuals or disability connected to his accepted employment injury of left shoulder and arm sprain. It further stated that appellant's shoulder impingement syndrome was not work related and provided him 30 days to submit additional information.

In support of his claim, appellant submitted medical reports dated March 16, 2010 to June 12, 2012 from Dr. Marcom, who stated that appellant continued to be unemployable in work involving use of his left hand and arm. In his June 12, 2012 medical report, Dr. Marcom stated that appellant continued to experience pain and debility from his August 24, 1977 injury. He noted that appellant's symptoms continued to grow more pronounced which interfered with his activities of daily living. Upon physical examination, Dr. Marcom noted no significant changes in appellant's condition with continued impairment and deterioration of his left upper extremity, causing increased tremors, weakness and pain. Dr. Marcom expected no significant change or improvement in the future and stated that appellant could work with limitations of

heavy lifting, bending, stooping, reaching overhead and pushing and pulling heavy objects. He further stated that appellant had to cease work as a repairman due to the progressive nature of his impairments caused by the injury compounded by his diabetes and the effects of aging. Dr. Marcom noted that appellant remained unemployable in other forms of work which required the use of the left hand and arm. He stated that he reviewed OWCP's May 30, 2012 preliminary determination and found many inconsistencies which influenced the independent evaluation done by Dr. Nadler. Dr. Marcom stated that appellant did receive medical treatment in 2010 and 2011, despite OWCP stating otherwise and concluded that he continued to have a five percent permanent impairment.

By decision dated July 24, 2012, OWCP terminated appellant's medical and wage-loss benefits effective July 29, 2012 on the grounds that the weight of the medical evidence rested with Dr. Nadler, who found that appellant did not continue to experience residuals of his work-related injury.²

LEGAL PRECEDENT

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁵ 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.⁶ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁸ When an employee cannot return to the

² The Board notes that appellant submitted additional evidence after OWCP rendered its July 24, 2012 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

³ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁴ *Id.*

⁵ *Roger G. Payne*, 55 ECAB 535 (2004).

⁶ *Pamela K. Guesford*, 53 ECAB 726 (2002).

⁷ *T.P.*, 58 ECAB 524 (2007); *Furman G. Peake*, 41 ECAB 351 (1975).

⁸ 5 U.S.C. § 8102(a).

date-of-injury job because of disability due to work-related injury or disease, but does return to alternative employment with an actual wage loss, OWCP must determine whether the earnings in the alternative employment fairly and reasonably represent the employee's loss of wage-earning capacity.⁹

Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated or the original determination was, in fact, erroneous.¹⁰ The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.¹¹

ANALYSIS

OWCP accepted that appellant sustained a left shoulder and arm sprain on August 24, 1977. The issue is whether it properly terminated his medical benefits and compensation for wage loss effective July 29, 2012, based on the opinion of the second opinion examiner Dr. Nadler. The Board finds that OWCP properly terminated appellant's medical benefits and compensation for wage loss.

OWCP referred appellant to Dr. Nadler for a second opinion evaluation to determine the nature and extent of his employment-related condition. Dr. Nadler reviewed the statement of accepted facts and medical record, providing a summary of appellant's previous medical reports and history. He reported that appellant complained of left shoulder pain from an August 24, 1977 work-related injury. Appellant stated that he had been living with the pain for approximately 35 years but never received treatment for it. After the injury, he stopped working as a pipefitter and worked fixing mobile homes. Upon physical examination, Dr. Nadler found no objective evidence of symptoms related to the accepted left shoulder and arm sprain, noting that the left shoulder revealed no signs of trauma. Appellant had mild discomfort in the acromioclavicular joint and subacromial space. Dr. Nadler noted that appellant's range of motion was good but that there were mild signs of impingement syndrome. He diagnosed status post left shoulder sprain with secondary impingement syndrome and stated that appellant could perform his date-of-injury job as a pipefitter because his condition had resolved. Dr. Nadler opined that appellant's present symptoms were most probably related to impingement syndrome which developed over a period of years, but was not related to his injury at work. In a work capacity evaluation of the same date, Dr. Nadler stated that appellant had no limitations as a result of his work accident in 1977.

The Board finds that OWCP met its burden of proof to terminate appellant's medical and wage-loss benefits based on the October 18, 2011 report of Dr. Nadler, who reviewed appellant's medical history, examined him and found no objective evidence of ongoing residuals or disability due to the accepted work-related conditions. Dr. Nadler's report represents the weight

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7 (October 2009).

¹⁰ *Harley Sims, Jr.*, 56 ECAB 320 (2005); *Tamra McCauley*, 51 ECAB 375 (2000).

¹¹ *Id.*

of the medical evidence and OWCP properly relied on his report in terminating appellant's benefits. The Board finds that he had an accurate history of the relevant facts and evaluated the course of appellant's condition.¹² Dr. Nadler's opinion is based on proper factual and medical history and his report contained a detailed summary of this history. He addressed the medical records to make his own examination findings and reached a reasoned conclusion regarding appellant's condition.¹³ At the time benefits were terminated, Dr. Nadler found no basis on which to attribute any residuals or continued disability to appellant's accepted left shoulder and arm sprain. He noted that appellant's condition had resolved and his current impingement syndrome was not related to the original 1977 injury, which had probably developed over a period of years. Thus, appellant required no work restrictions as a result of the 1977 left arm and shoulder sprain. Dr. Nadler's opinion as set forth in his October 18, 2011 report is found to be probative and reliable. The Board finds that Dr. Nadler's opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted conditions.

Subsequent to Dr. Nadler's report, appellant submitted medical reports dated March 16, 2010 to June 12, 2012 from Dr. Marcom, appellant's attending physician. In his June 12, 2012 report, Dr. Marcom noted that appellant continued to be unemployable in work involving use of his left hand and arm and continued to experience pain and debility from his August 24, 1977 injury. He reported that appellant's symptoms continued to grow more pronounced which interfered with his activities of daily living. Upon physical examination, Dr. Marcom noted no significant change in appellant's condition with continued impairment and deterioration of the left upper extremity, causing increased tremors, weakness and pain. He expected no significant change or improvement in the future and stated that appellant could work with limitations of heavy lifting, bending, stooping, reaching overhead and pushing and pulling heavy objects. Dr. Marcom further noted that appellant had to cease work as a repairman due to the progressive nature of his impairments caused by the injury and compounded by his diabetes and the effects of aging. He noted that appellant remained unemployable in other forms of work which required the use of the left hand and arm. Dr. Marcom stated that he reviewed OWCP's May 30, 2012 preliminary determination and found many inconsistencies which influenced the independent evaluation done by Dr. Nadler. He stated that appellant did receive medical treatment in 2010 and 2011, despite OWCP stating otherwise. Dr. Marcom concluded that appellant continued to have a five percent permanent impairment.

While Dr. Marcom noted that appellant continued to be unemployable in work involving use of his left hand and arm, he failed to address how any continuing condition or medical restrictions and disability were causally related to the accepted strain of left shoulder and upper arm conditions. The Board notes that Dr. Marcom's additional June 12, 2012 medical report was almost identical to his previous reports. While Dr. Marcom generally supported that appellant's continuing symptoms were due to the work injury, his opinion on causal relationship was

¹² *L.S.*, Docket No. 12-1714 (issued March 1, 2013).

¹³ See *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, 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 in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

conclusory without any additional explanation as to how the accepted conditions remained symptomatic or caused disability.¹⁴ He failed to explain why a shoulder sprain would continue for 35 years with continued symptoms of pain and debility. Moreover, Dr. Marcom's opinion on the cause of appellant's condition is equivocal as Dr. Marcom noted that diabetes and the effects of aging were also causing his continued disability. Therefore, his reports are of diminished probative value and insufficient to overcome the weight of Dr. Nadler's report or to create a medical conflict.¹⁵

The Board finds Dr. Nadler's second opinion report is sufficiently rationalized to establish that appellant's employment-related left shoulder and arm sprain had resolved.¹⁶ Dr. Nadler's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. There is no other medical evidence contemporaneous with the termination of appellant's benefits, which supports that he has any continuing residuals or disability related to his accepted work-related injuries.¹⁷ Thus, OWCP properly terminated appellant's medical and wage-loss benefits.¹⁸

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's medical and wage-loss benefits effective July 29, 2012.

¹⁴ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹⁵ *Id.*

¹⁶ C.S., Docket No. 12-163 (issued February 21, 2013).

¹⁷ D.R., Docket No. 12-1697 (issued January 29, 2013).

¹⁸ D.M., Docket No. 11-386 (issued February 2, 2012); *Marshall E. White*, 33 ECAB 1666 (1982).

ORDER

IT IS HEREBY ORDERED THAT the July 24, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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