

employment activities.² The claim was accepted for impingement syndrome of the left shoulder, left lateral epicondylitis, left lateral extensor tendon tear and left elbow tendinitis. On April 5, 2011 OWCP accepted appellant's claim for a recurrence of total disability due to approved surgery of the left elbow, which occurred on March 16, 2011. Appellant was paid appropriate wage-loss compensation.

OWCP received a January 6, 2011 magnetic resonance imaging (MRI) scan of appellant's left shoulder, which was interpreted by Dr. Jeffrey J. Larkin, a Board-certified diagnostic radiologist, as revealing areas of probably tendinosis of the rotator cuff without significant-sized rotator cuff tear visualized.

Appellant was treated by Dr. Laura Ross, a Board-certified osteopath specializing in orthopedic surgery. In a June 17, 2011 attending physician's report, Dr. Ross diagnosed recalcitrant lateral epicondylitis of the left elbow and left shoulder impingement syndrome causally related to employment activities. She indicated that appellant was totally disabled from March 25 through July 18, 2011, when she would be able to resume regular work.

OWCP referred appellant, together with the medical record, statement of accepted facts (SOAF) and a position description for her date-of injury position, to Dr. Kenneth P. Heist, a Board-certified osteopath specializing in orthopedic surgery, for an examination and an opinion as to whether she was able to return to her regular, full-time job. Dr. Heist was asked to include a well-reasoned explanation of how his findings supported his medical opinion. He was asked to complete an OWCP-5 form for work restrictions and specifically to indicate how many pounds appellant was capable of handling occasionally.

In a report dated July 6, 2011, Dr. Heist opined that appellant was capable of returning to her date-of-injury job with no restrictions. Examination of the upper extremities revealed the left elbow with well-healed lateral incisions. There was no evidence of infection. Inspection of the left upper extremity revealed circulation was satisfactory. Examination of the shoulders revealed forward elevation right, 0 to 150 degrees and left, 0 to 150 degrees; bilateral abduction was 0 to 150 degrees; bilateral adduction was 0 to 30; internal rotation was 0 to 40 degrees bilaterally; and external rotation was 0 to 90 degrees bilaterally. There was no evidence of a rotator cuff tear bilaterally and no acromioclavicular crepitation or any evidence of impingement bilaterally. Range of elbow motion included: flexion-extension right, 0 to 150 degrees and left, 0 to 140 degrees; supination and pronation were 0 to 80 degrees bilaterally. Dr. Heist diagnosed status postoperative left lateral epicondylectomy and right lateral epicondylectomy and left shoulder sprain. He opined that appellant had reached maximum medical improvement and that no additional orthopedic treatment or diagnostic testing was indicated. In response to questions posed by OWCP, Dr. Heist stated that appellant had a slight restriction of the last few degrees of

² Appellant initially filed a claim for a recurrence of total disability under File No. xxxxxx526, which was accepted for disorder of bursae and tendons of the left shoulder and enthesopathy of the left elbow. The case was administratively converted into a new injury claim under File No. xxxxxx608. Appellant's September 28, 2011 claim (File No. xxxxxx466) was accepted for left elbow strain. These claims were consolidated, due to the overlapping nature of the claims, with File No. xxxxxx608 serving as the master file. Other prior claims include appellant's December 15, 2001 occupational disease claim was accepted for lateral epicondylitis of the right elbow (File No. xxxxxx257). Her April 2, 2003 claim (File No. xxxxxx630) was accepted for neck and shoulder sprain.

extension of the left elbow, but that his clinical examination was otherwise normal with good range of motion and strength. He indicated that appellant had no current disabilities.

In a decision dated July 19, 2011, OWCP terminated appellant's wage-loss benefits based on Dr. Heist's second opinion report.³

On October 14, 2011 appellant, through her representative, requested reconsideration. Counsel argued that Dr. Heist's report was insufficient to constitute the weight of the medical evidence. He also argued that OWCP had denied appellant's due process rights by failing to provide notice of termination of compensation benefits.

Appellant submitted numerous reports from Dr. Ross supporting her claim of disability. In a July 15, 2011 report, Dr. Ross stated that physical examination revealed weakness of appellant's left arm, compared to her right, but that appellant's condition had improved. She reported better range of motion, no gross instability of the left elbow and some crepitation with range of motion of the left shoulder. Dr. Ross concluded that appellant could return to full duty in four weeks.

On July 22, 2011 Dr. Ross opined that appellant could return to work with restrictions, but was unable to perform the duties of her usual job.

In a narrative report dated July 25, 2011, Dr. Ross disagreed with Dr. Heist's opinion that appellant no longer had a medical condition due to her accepted injury, as she clearly had weakness in the left arm and positive impingement signs in the left shoulder. These issues needed to be addressed prior to a return to work. In an August 19, 2011 report, Dr. Ross opined that appellant could work with restrictions, including lifting a maximum of 15 pounds. On September 16, 2011 she released appellant to work full time without restrictions. Dr. Ross stated that appellant was totally disabled from March 16 through August 19, 2011 due to her accepted injury.

An MRI scan of appellant's left elbow dated August 26, 2011, interpreted by Dr. Sherrill Little, a Board-certified diagnostic radiologist, stated an impression of underlying tendinosis of the common extensor tendon with perhaps a minimal partial thickness tear remaining. Dr. Little concluded that the overall appearance of appellant's elbow had improved significantly when compared to the prior study.

In a decision dated January 10, 2012, OWCP denied modification of its prior decision. Referencing Chapter 2.1400.4c of its procedure manual, the claims examiner noted that OWCP was not required to provide notice of its intent to terminate appellant's compensation benefits because she was not on the periodic rolls.

On March 16, 2012 appellant again requested reconsideration, contending that appellant was still unable to perform her date-of-injury job. Alternatively, counsel argued that the medical evidence was sufficient to create a conflict.

³ On July 19, 2011 OWCP also issued a notice of proposed termination of medical benefits based on Dr. Heist's opinion that appellant had no residuals from her accepted injury.

In a February 8, 2012 report, Dr. Ross provided examination findings reflecting tenderness to palpation in the radial tunnels of the left arm. In March 21, 2012 report, she stated that appellant had been unable to return to her date-of-injury position since her September 28, 2011 injury.

Dr. Trina Lisko, an osteopathic physician specializing in physical medicine and rehabilitation, reported on March 19, 2012 that electrodiagnostic evaluation was positive for acute left ulnar neuritis; however, all nerve conduction studies and F-wave latencies of the left upper extremity were within normal limits.

In a March 23, 2012 report, Dr. Ross stated that appellant's electromyography (EMG) and nerve conduction studies showed left ulnar neuropathy. She also related that appellant's left elbow MRI scan revealed postsurgical change in the common extensor tendon with no evidence of a new tear.

By decision dated June 13, 2012, OWCP denied modification of its prior decisions on the grounds that the medical evidence did not establish that appellant's current disability was work related.

LEGAL PRECEDENT

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability which continued after termination of compensation benefits.⁴

ANALYSIS

OWCP accepted that appellant sustained left shoulder and elbow injuries on September 8, 2010 and terminated appellant's compensation benefits on July 19, 2011. The subject of this appeal is her March 16, 2012 request for reconsideration and the June 13, 2012 OWCP decision which denied her claim for continuing disability. With her request for reconsideration, appellant submitted medical evidence to the record to substantiate continuing disability due to the September 8, 2010 injury. The Board finds that appellant did not meet her burden of proof to establish continuing disability after July 19, 2011, due to the September 8, 2010 injury.

On July 22, 2011 Dr. Ross reported that appellant could work eight hours a day, with restrictions. In a narrative report dated July 25, 2011, she stated that she disagreed with Dr. Heist's conclusion that appellant no longer had a medical condition causally related to her accepted injury. Dr. Ross opined that appellant still had weakness in the left arm and positive impingement signs in the left shoulder. She, however, did not explain the basis of her opinion, based upon objective evidence, and did not explain how her findings differed from Dr. Heist's findings upon examination. Dr. Ross did not provide a rationalized medical opinion explaining

⁴ *Howard Y. Miyashiro*, 51 ECAB 253 (1999).

why appellant remained disabled and required further medical treatment as a result of the accepted injury.

Dr. Ross again evaluated appellant in February and March 2012. In her February 8, 2012 report, she noted tenderness to palpation in the radial tunnel of the left arm. Dr. Ross related on March 21, 2012 that appellant had been unable to return to work since her September 28, 2011 injury. On March 23, 2012 she related that appellant's EMG and nerve conduction studies showed left ulnar neuropathy. Dr. Ross also reported that appellant's left elbow MRI scan revealed postsurgical change in the common extensor tendon with no evidence of a new tear. She offered no medical opinion relating these findings to appellant's September 8, 2010 injury, rather than the new September 28, 2011 injury.

The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician, who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.⁵

The Board finds that Dr. Ross did not provide a medical opinion which based upon a complete medical history, objective findings and supported by sound medical reasoning explained that appellant had continuing disability after July 19, 2011 causally related to her accepted injury of September 8, 2010.

The final report from Dr. Lisko, dated March 19, 2012, noted acute ulnar neuritis, but offered no opinion as to the cause of this condition or whether it disabled appellant.

While appellant's counsel argues on appeal that there is at least a conflict in medical evidence as to whether appellant had continuing disability after July 19, 2011 causally related to the September 8, 2010 injury, the Board finds that appellant did not meet her burden of proof to establish continuing disability, with rationalized medical evidence explaining causal relationship.

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 wage-loss compensation effective July 19, 2011. The Board also finds that she has not established continuing disability after July 19, 2011.

⁵ *Sandra D. Pruitt*, 57 ECAB 126 (2006).

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 9, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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