

Counsel contends that OWCP did not properly select the impartial medical examiner as there were no screen captures of record documenting the selection process. Additionally, he asserts that Dr. Snyder based his opinion on an inaccurate statement of accepted facts.

FACTUAL HISTORY

OWCP accepted that on February 9, 2001 appellant, then a 26-year-old letter carrier, sustained right shoulder, lumbar and coccygeal sprains when she slipped and fell on ice. On March 19, 2002 appellant underwent arthroscopic subacromial decompression of the right shoulder, authorized by OWCP. On June 20, 2002 she returned to work as a modified carrier technician with permanent restrictions against lifting more than 25 pounds and overhead reaching. Appellant's duties included casing mail. OWCP accepted a recurrence of disability commencing January 25, 2003. On October 15, 2004 it obtained a second opinion from Dr. Philip H. Lewis, an osteopath, who opined that appellant could perform light duty for four hours a day. OWCP found a conflict between Dr. Mark A.P. Filippone, an attending Board-certified physiatrist, for appellant and Dr. Lewis, for the government. To resolve the conflict, it selected Dr. Paul A. Foddai, a Board-certified orthopedic surgeon, who submitted a March 1, 2005 report stating that she could work eight hours a day with unspecified right shoulder limitations. Dr. Filippone, held appellant off work through August 17, 2005, when he released her to full-time light-duty with lifting permanently limited to 20 pounds. Appellant returned to work as a full-time modified carrier technician through March 4, 2009.² She filed a claim for a recurrence of disability commencing March 4, 2009, sustained while on modified duty. Appellant stopped on work March 5, 2009. Dr. Filippone submitted March 5, 2009 reports finding her totally disabled due to internal derangement of the right shoulder and cervical radiculopathy. As appellant attributed the recurrence to new employment factors, OWCP developed the claim as one for a new injury.

By decision dated May 8, 2009, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish fact of injury.

Following a September 9, 2009 telephonic hearing, appellant submitted a June 24, 2009 report from Dr. Filippone stating that casing and delivering mail on or before March 4, 2009 "severely exacerbated" her right shoulder condition and caused cervical radiculopathy and carpal tunnel syndrome.

By decision dated November 3, 2009, an OWCP hearing representative set aside the May 8, 2009 decision. The case was remanded to obtain a second opinion regarding whether appellant's duties caused or aggravated a right shoulder condition, cervical radiculopathy or carpal tunnel syndrome. On December 17, 2009 OWCP obtained a second opinion by Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon, who opined that the accepted conditions had resolved and appellant could perform light duty for four hours a day.³

² By an August 29, 2006 decision, OWCP denied appellant's claim for a May 2006 recurrence of disability.

³ Dr. Lakin submitted a January 26, 2012 report finding no objective signs of shoulder impingement or other related residuals. He opined that appellant could perform full duty for eight hours a day.

By decision dated February 26, 2010, OWCP accepted a recurrent impingement syndrome of the right shoulder based on Dr. Filippone's opinion. On March 19, 2010 appellant underwent open subacromial decompression and a Mumford resection of the right distal clavicle, authorized by OWCP. Dr. Filippone held her off work through June 7, 2011 and continuing.⁴ In an August 24, 2011 report, he noted objective binding and locking down of the right glenohumeral joint, paraspinal cervical and lumbar spasm and restricted right shoulder motion.

By decisions dated August 12, 2011 and April 23, 2012, OWCP terminated appellant's wage-loss and compensation benefits based on Dr. Lakin's opinion. However, it vacated the decisions on November 21, 2011 and July 9, 2012 respectively. In the July 9, 2012 decision, a hearing representative found a conflict of medical opinion between Dr. Lakin, for OWCP and Dr. Filippone, for appellant. The hearing representative remanded the case for selection of an impartial medical specialist. Appellant continued to receive compensation for total disability on the periodic rolls.

On remand, OWCP selected Dr. Snyder, a Board-certified orthopedic surgeon, as the impartial medical examiner. The record contains an ME0231, appointment schedule notification, noting that Dr. Snyder was selected as a referee physician. The record also contains an August 13, 2012 referral form, noting that he was selected using the Physicians Directory System (PSD). OWCP included screen captures showing that three physicians were bypassed, as one did not accept compensation claimants and two others did not have current contact information in the system. It provided Dr. Snyder with a copy of the medical record and a statement of accepted facts. The statement of accepted facts enumerated the accepted conditions under File No. xxxxxx903 and File No. xxxxxx985 and noted the two right shoulder surgeries. The statement of accepted facts omitted that OWCP had authorized both procedures.

Dr. Snyder submitted an October 26, 2012 report reviewing the medical record and statement of accepted facts. On examination of the right shoulder, he noted 170 degrees passive forward flexion, 90 degrees abduction and 170 degrees passive abduction with internal rotation. Appellant attained symmetric active range of motion of both shoulders without pain. Dr. Snyder observed no pain, weakness or limited motion of the right rotator cuff and acromioclavicular joint. He also noted negative Tinel's and Phalen's signs over the median nerve at both wrists, no atrophy or weakness of either thenar eminence and 5/5 strength throughout all muscle groups of both arms. Dr. Snyder also noted a normal neurologic examination of both lower extremities. He opined that there were no objective signs of the accepted right shoulder, lumbar and coccygeal injuries and that appellant's subjective pain complaints were not corroborated by clinical findings on examination. Dr. Snyder noted that appellant had attained maximum medical improvement and that no further treatment was warranted. He released appellant to full time with no restrictions.

By notice dated December 7, 2012, OWCP advised appellant that it proposed to terminate her wage-loss and medical benefits, based on Dr. Snyder's opinion that the accepted conditions had ceased without residuals.

⁴ In a July 7, 2010 report, Dr. Filippone opined that electromyography and nerve conduction velocity studies of both upper extremities, which he performed that day showed right C5-6 and C7 radiculopathy and mild bilateral carpal tunnel syndrome. He also noted clinical evidence of right shoulder derangement.

In a December 17, 2012 letter, counsel objected to the proposed termination of compensation, asserting that Dr. Snyder failed to address the physical requirements of appellant's job, did not measure active range of motion in the right shoulder or address whether a lumbar or wrist condition would affect her ability to work. Counsel submitted a November 28, 2012 report from Dr. Filippone, finding her condition unchanged.

By decision dated January 8, 2013, OWCP terminated appellant's wage-loss and medical compensation benefits effective January 13, 2013. It found that the accepted conditions had ceased without residuals and accorded Dr. Snyder the weight of the medical evidence. The January 8, 2013 decision was addressed to appellant at her address of record and to counsel at his law office address of record.

LEGAL PRECEDENT

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁵ 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.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ 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.⁸

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 (known as a referee physician or impartial medical specialist) who shall make an examination.⁹

ANALYSIS

OWCP accepted that appellant sustained a right shoulder sprain, right shoulder impingement, lumbar and coccygeal sprains. Appellant received total disability compensation for intermittent absences from February 9, 2001 to January 12, 2013.

Dr. Filippone, an attending Board-certified physiatrist, held appellant off work from March 5, 2009 onward due to right shoulder impingement syndrome, cervical radiculopathy and bilateral carpal tunnel syndrome, which he attributed to casing and delivering mail while on modified duty. Dr. Lakin, a Board-certified orthopedic surgeon and second opinion physician, provided December 17, 2009 and January 26, 2012 reports finding no objective sign of the

⁵ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁶ *Id.*

⁷ *Roger G. Payne*, 55 ECAB 535 (2004).

⁸ *Pamela K. Guesford*, 53 ECAB 726 (2002).

⁹ 5 U.S.C. § 8123.

accepted conditions, a cervical spine condition or carpal tunnel syndrome. On July 9, 2012 OWCP found a conflict between Dr. Filippone and Dr. Lakin. It selected Dr. Snyder, a Board-certified orthopedic surgeon, to resolve the conflict. The record contains an ME0231 appointment notification form, an August 13, 2012 referral form indicating that the PDS was used to select Dr. Snyder and screen captures explaining why three other physicians were not selected as referee.

Dr. Snyder provided an October 26, 2012 report based on the medical record and a statement of accepted facts. He noted detailed measurements for right shoulder and cervical ranges of motion. Dr. Snyder also performed a neurologic examination of all four extremities. He explained that, based on his clinical findings, appellant had no objective neurologic abnormality indicative of cervical radiculopathy or carpal tunnel syndrome. Dr. Snyder found no objective abnormality of the right shoulder, lumbar spine or coccyx. He therefore opined that the accepted injuries had resolved without residuals and that appellant could resume full-time unrestricted duty.

Based on Dr. Snyder's opinion, OWCP issued a preliminary notice of termination on December 7, 2012. Counsel submitted a letter alleging deficiencies in Dr. Snyder's opinion and a November 28, 2012 report from Dr. Filippone finding appellant's condition unchanged. OWCP terminated her wage-loss and medical benefits effective January 13, 2013.

The Board finds that Dr. Snyder's opinion is sufficient to establish that the accepted right shoulder, lumbar and coccygeal injuries had ceased without residuals as of January 13, 2013. Dr. Snyder's report was based on the complete medical record and a statement of accepted facts. He also performed a thorough clinical examination. Dr. Snyder then presented detailed rationale explaining how and why the medical evidence and clinical findings negated an ongoing right shoulder, lumbar or coccygeal condition. Also, he found no objective evidence of carpal tunnel syndrome or cervical radiculopathy, conditions appellant attributed to work factors.

Dr. Filippone failed to explain how the accepted February 9, 2001 injuries or March 4, 2009 recurrence of right shoulder impingement would continue to disable appellant on and after January 13, 2013. The Board finds that Dr. Snyder's report is sufficiently rationalized to represent the weight of the medical evidence in this case.¹⁰ Therefore, OWCP's January 8, 2013 decision terminating appellant's wage-loss and medical compensation benefits as of January 13, 2013 was proper under the law and facts of this case.

On appeal, counsel asserts that OWCP did not properly address the January 8, 2013 decision to him as appellant's authorized representative. The Board notes, however, that the January 8, 2013 decision was properly addressed to both appellant at her address of record and to counsel at his law office address of record. Counsel also contends that OWCP did not properly select Dr. Snyder as impartial medical examiner as there were no screen captures of record documenting the selection process. The record does contain screen captures, imaged into the case on August 22, 2012, documenting the bypass of three physicians and setting forth the reasons they were not selected. Counsel also argues that Dr. Snyder's opinion is deficient as he opined that appellant did not have carpal tunnel syndrome. The Board notes that Dr. Snyder performed a thorough clinical examination of both upper extremities and noted detailed findings

¹⁰ *Deborah L. Beatty*, 54 ECAB 340 (2003).

demonstrating that she had no neurologic deficit of either arm. Additionally, counsel asserts that Dr. Snyder based his opinion on an inaccurate statement of accepted facts as the version provided by OWCP did not state that two right shoulder surgeries were authorized by OWCP. The Board notes that the statement of accepted facts provided to Dr. Snyder does not state that OWCP authorized the right shoulder arthroscopy and subsequent open procedure. However, as Dr. Snyder did not find any objective abnormality of the right shoulder, this omission is nondispositive under the facts and circumstances of this case.

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 properly terminated appellant's wage-loss and medical compensation benefits effective January 13, 2013 on the grounds that residuals of accepted right shoulder, lumbar and coccygeal injuries had ceased without residuals.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 8, 2013 is affirmed.

Issued: January 7, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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