

FACTUAL HISTORY

On April 8, 2010 appellant, then a 49-year-old aircraft sheet metal mechanic, filed an occupational disease claim alleging tennis elbow in his left arm as a result of repetitive motions during his federal employment. The motions included bending, stooping, lifting up to 50 pounds, pulling, holding parts for long periods, drilling, sanding, riveting, bucking rivets, painting of panels with primer, cutting and squeezing. Appellant also noted that on March 24 and 25, 2010 he installed approximately 100 airlock fasteners in gap cover panels. OWCP accepted his claim for left lateral epicondylitis.

On February 5, 2013 OWCP referred appellant to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, for a second opinion. In a February 19, 2013 report, Dr. Swartz stated that appellant suffered from chronic lateral epicondylitis in his left elbow, which was accepted as related to his federal employment. He found that there were no residuals of the accepted condition based on objective findings. Dr. Swartz further opined that appellant required no further medical treatment referable to the claim.

On May 2, 2013 OWCP approved appellant's request to change physicians to Dr. Randall K. Schaefer, a Board-certified orthopedic surgeon. In a May 29, 2013 report, Dr. Schaefer diagnosed chronic left lateral elbow tendinitis and obesity. He injected appellant's lateral epicondyle with cortisone and lidocaine which, he noted, gave appellant partial pain relief. Dr. Schaefer recommended work restrictions of no gripping or lifting more than 10 pounds. In a June 7, 2013 report, he noted that appellant underwent a magnetic resonance imaging (MRI) scan on June 3, 2013. It demonstrated common extensor tendinosis consistent with his diagnosis. Dr. Schaefer found that appellant continued to have lateral elbow pain aggravated by gripping. He recommended a work restriction of no gripping or lifting more than 10 pounds. In a June 10, 2013 report, Dr. Schaeffer indicated that he discussed with appellant his treatment options, including a left elbow fasciectomy and ostectomy.

In order to resolve the conflict in opinion between Dr. Swartz and Dr. Schaefer as to whether appellant had residuals of his employment injury, OWCP referred appellant to Dr. Howard Shortley, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a December 10, 2013 report, Dr. Shortley reviewed appellant's history of injury, medical treatment and findings on physical examination. He determined that appellant no longer had left lateral epicondylitis. Dr. Shortley noted that appellant had no complaints referable to the lateral side of his left elbow, no tenderness present on the lateral side of his left elbow and forceful gripping did not produce pain in the left elbow. Appellant had developed some medial epicondylitis from work around the house or of unknown cause, but that it was not employment related. Dr. Shortley concurred with Dr. Swartz that appellant no longer had objective residuals from his employment injury and required no further medical treatment. Although appellant's chronic left lateral epicondylitis had cleared, he continued to have shoulder pain that was not easily explained. Dr. Shortley noted that appellant's MRI scan was negative, that the physical examination did show positive impingement tests in his left shoulder. The MRI scan did not show any sign of impingement. He noted that some diabetic patients developed pain and stiffness in their shoulders and that it was possible that this was related to appellant's pain.

Dr. Shortley also noted that appellant appeared very prone to tendinitis. He stated that job limitations would be appropriate but not relate to any employment injury and that, based on objective findings, appellant did not have any residuals of the accepted injury. Dr. Shortley noted left lateral epicondylitis did not cause any pain in the lateral side of the elbow on examination and that the tests for lateral epicondylitis were negative. It appeared that appellant was never totally disabled due to his employment-related condition, but did have periods when he was partially disabled due to his lateral epicondylitis and shoulder pain which had lasted for two to three years.

On January 23, 2014 OWCP issued a notice proposing to terminate appellant's medical benefits and wage-loss compensation. It found that the report of Dr. Shortley found that the residuals of his accepted employment-related condition had ceased.

On February 11, 2014 appellant disagreed with the proposal to terminate his benefits. He argued that the focus appeared to be on his elbow, but that his main problem involved his left shoulder, which involved another claim.

In a March 11, 2014 decision, OWCP terminated appellant's medical benefits and wage-loss compensation effective that date.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

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

In situations where there exist 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 upon a proper factual background, must be given special weight.⁷

³ See also *J.P.*, Docket No. 13-1049 (issued August 16, 2013); *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁵ See *T.P.*, 58 ECAB 524 (2007).

⁶ See *I.J.*, 59 ECAB 408 (2008); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ *Manuel Gill*, 52 ECAB 282 (2001).

ANALYSIS

OWCP accepted appellant's claim for left lateral epicondylitis. It terminated his compensation and medical benefits effective March 11, 2014 as he no longer had any residuals of his accepted employment-related conditions.

Appellant's treating physician, Dr. Schaefer, advised that he still had residuals of left lateral epicondylitis. The second opinion physician, Dr. Swartz, found that there were no residuals of this condition that were related to appellant's federal employment. In order to resolve this conflict between the medical opinion of appellant's treating physician and the second opinion physician, OWCP properly referred him to Dr. Shortley for an impartial medical examination.⁸ Dr. Shortley opined that appellant's chronic left lateral epicondylitis was no longer in existence. In support of this conclusion, he provided a well-rationalized medical opinion supported by an evaluation of appellant's history of injury, medical history and physical examination. Dr. Shortley did note that appellant had chronic left shoulder pain and medial epicondylitis of the left elbow, but determined that these conditions were unrelated to any work injury. In support of his conclusion that appellant no longer suffered from left lateral epicondylitis, he noted that appellant had no complaints referable to the lateral side of his left elbow or tenderness present on the lateral side of his left elbow. Dr. Shortley noted that forceful gripping did not reproduce any pain in the left elbow. He also noted that diagnostic tests for lateral epicondylitis were negative.

The Board finds that Dr. Shortley's report represents the special weight of the medical evidence. OWCP properly relied upon his report to terminate appellant's medical and compensation benefits. The Board finds that Dr. Shortley had a full and accurate knowledge of the relevant facts and evaluated the course of appellant's condition. He concluded that appellant had no residuals from the accepted condition of employment-related left lateral epicondylitis. OWCP properly gave special weight to the opinion of the impartial medical examiner and terminated appellant's medical and compensation benefits due to the fact that the employment-related condition of left lateral epicondylitis had ceased.⁹

Appellant's counsel contends on appeal that OWCP's decision was contrary to fact and law. For the reasons noted, the Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective March 11, 2014.

Appellant may submit evidence or argument with a written request for reconsideration 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 compensation and medical benefits for left lateral epicondylitis effective March 11, 2014.

⁸ See *S.N.*, Docket No. 08-1869 (issued May 5, 2009).

⁹ See *J.T.*, Docket No. 14-72 (issued July 17, 2014).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 11, 2014 is affirmed.

Issued: November 17, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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