

FACTUAL HISTORY

This case has previously been before the Board. In a decision dated January 26, 2011, the Board reversed a December 28, 2009 decision of OWCP terminating appellant's compensation on the grounds that she refused an offer of suitable work pursuant to 5 U.S.C. § 8106(c).² The Board found that there was an unresolved conflict in the medical opinion evidence between Dr. Steven B. Fish, a treating Board-certified orthopedic surgeon, and Dr. Christopher V. Horn, a second opinion Board-certified orthopedic surgeon, on what her work restrictions were. The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference.³

Following the Board's decision, OWCP reinstated appellant on the periodic rolls for temporary total disability.

In a June 24, 2011 attending physician's report, Dr. Fish diagnosed knee pain and provided work restrictions. He checked "no" to the question of whether there had been any history or evidence of a preexisting injury, physical impairment, or disease.

In a June 24, 2011 report, Dr. Fish diagnosed bilateral knee pain and acromioclavicular (AC) joint arthritis and pain. He noted that appellant injured her left shoulder and both knees, primarily the left knee, when she slipped and fell on ice at work on February 9, 2005. A physical examination revealed AC joint tenderness, good left shoulder range of motion with moderate impingement signs, good bilateral knee range of motion, and moderate tenderness over the left knee joint line.

In subsequent reports dated September 12, 2011 and April 30, 2012, Dr. Fish reported appellant was seen for a follow-up of her employment-related left shoulder and bilateral knee injuries. He provided physical findings and reported no change as she was "doing basically the same."

On April 12, 2013 OWCP referred appellant for a second opinion evaluation with Dr. Aubrey A. Swartz, an orthopedic surgeon, for an evaluation of her current condition. In an April 26, 2013 report, Dr. Swartz stated that he had reviewed the medical evidence and statement of accepted facts and performed a physical examination. A physical examination revealed tenderness in the left anterior shoulder, a negative O'Brien's test, negative impingement test, positive Abbott-Summerfield test, positive left shoulder Speed's test, intact bilateral upper extremity sensation, and left knee lateral tenderness, pain with left knee patellofemoral compression. Range of motion for the left shoulder included 40 degrees extension, 145 degrees flexion, 175 degrees abduction, 60 degrees internal rotation, 90 degrees external rotation, and 30 degrees adduction. Dr. Swartz noted that appellant had mildly restricted left shoulder motion, no left upper extremity atrophy, normal bilateral upper extremity strength, normal bilateral knee

² Docket No. 10-736 (issued January 26, 2011).

³ On February 10, 2005 appellant, then a 48-year-old temporary cook, filed a traumatic injury claim alleging that on that day she injured her left shoulder and left knee when she slipped and fell on ice. OWCP accepted the claim for left shoulder/arm strain and left knee contusion and placed her on the periodic rolls for temporary total disability.

range of motion, no left thigh or calf atrophy, normal bilateral knee quadriceps strength, and left knee retropatellar crepitus, which was attributable to patellar chondromalacia. Based on his examination, he opined that there was no evidence supporting that she continued to have residuals or disability due to her accepted February 10, 2005 slip and fall. Dr. Swartz concluded that the left knee chondromalacia degenerative arthritic changes were a preexisting condition based on a February 16, 2005 x-ray interpretation, which showed patellofemoral joint and medial compartment arthritis. As to the left shoulder, he related that a September 30, 2005 report noted AC joint changes in a magnetic resonance imaging (MRI) scan, which he opined was a preexisting condition, and that the rotator cuff tendinitis might be related to that condition. Dr. Swartz opined that it was questionable that appellant's slip and fall would have produced long-term disability due to either knee or left shoulder conditions. He attributed her left shoulder pain as due to an irritation of the rotator cuff or supraspinatus, which he indicated that was not unusual particularly in a middle-aged person and her age at the time of injury was 48. In concluding, Dr. Swartz concluded that appellant had no disability or residuals at this time and is capable of performing the job offered by the employing establishment.

In a May 9, 2013 report, Dr. Barry M. Schultz, a treating Board-certified internist, diagnosed left shoulder impingement syndrome and bilateral knee osteoarthritis, greater on the left. A physical examination revealed tenderness on palpation over bilateral paraspinal muscles, tenderness directly on palpation over the left AC joint, full active shoulder range of motion, tenderness on palpation of the knee lateral joint line, and full knee active range of motion.

On October 4, 2013 OWCP issued a notice proposing to terminate appellant's compensation and medical benefits.

In a letter dated October 14, 2013, appellant disagreed with the proposal to terminate her benefits. She denied that she had ever had or been diagnosed with a preexisting condition prior to Dr. Swartz' report. Appellant noted that she felt the examination by Dr. Swartz had been more like an interrogation. She also disagreed with his conclusion that her condition had resolved within three to six months of the injury.

By decision dated November 12, 2013, OWCP finalized the termination of appellant's compensation benefits. It found Dr. Swartz' opinion constituted the weight of the evidence establishing that she no longer had any residuals or disability due to her accepted employment injury.

In a letter dated November 18, 2013, appellant's counsel requested a telephonic hearing before an OWCP hearing representative, which was held on May 8, 2014.

By decision dated July 23, 2014, the hearing representative affirmed the termination of appellant's compensation benefits.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁴ After it has determined that an

⁴ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁸

ANALYSIS

OWCP accepted appellant's claim for shoulder/arm strain and knee contusion. By decision dated November 12, 2013, it terminated her compensation and medical benefits. OWCP found that the weight of the evidence rested with the opinion of Dr. Swartz, an OWCP referral physician, who concluded that appellant no longer had any disability or residuals due to the accepted February 10, 2005 employment injury. An OWCP hearing representative affirmed the November 12, 2013 decision on July 23, 2014.

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits based on the opinion of Dr. Swartz, an OWCP referral physician, who reviewed the history of her employment injury, medical treatment, and the statement of accepted facts concerning the left shoulder/arm strain and left knee contusion. Dr. Swartz reported essentially normal findings on physical examination and noted no objective evidence of the accepted employment conditions. He opined that appellant no longer had any residuals or disability due to her accepted February 10, 2005 employment injury. Dr. Swartz found that the February 16, 2005 x-ray interpretation showed patellofemoral joint and medial compartment arthritis and September 30, 2005 MRI scan showed left shoulder AC joint changes, which he opined showed appellant had preexisting conditions. He found it was questionable that the slip and fall would have produced longer term disability to either her knee or left shoulder. Dr. Swartz concluded that appellant's current condition and disability were due to her preexisting conditions and unrelated to the accepted accident.

The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁹ Dr. Swartz fully discussed the history of injury and explained that there were no objective findings to establish that appellant had any continuing

⁵ *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁶ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁷ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

⁹ *See K.W.*, 59 ECAB 271 (2007); *Ann C. Leanza*, 48 ECAB 115 (1996).

employment-related residuals or disability. The Board finds that his opinion is detailed, well rationalized, and based upon a complete and accurate history. The Board finds that Dr. Swartz' opinion represents the weight of the medical evidence and establishes that appellant no longer has any residuals or disability from her accepted employment conditions of left shoulder/arm strain and left knee contusion. OWCP has met its burden of proof to terminate compensation.

It is appellant's burden to provide rationalized medical evidence sufficient to establish causal relation for conditions not accepted by OWCP. It is not OWCP's burden to disprove any such relationship.¹⁰ Dr. Fish diagnosed bilateral knee pain and AC joint arthritis and pain. He failed to provide any rationale explaining how the diagnosed conditions of bilateral knee pain and AC joint arthritis and pain or left shoulder impingement syndrome were caused or aggravated by appellant's employment injury. The Board has held that reports lacking medical rationale are of limited probative value.¹¹ Dr. Schultz diagnosed left shoulder impingement syndrome and bilateral knee osteoarthritis, greater on the left. He did not provide an employment injury history or provide an opinion on the cause of these conditions. The reports from Drs. Fish and Schultz are insufficient to establish that she sustained the bilateral knee pain, AC joint arthritis and pain, left shoulder impingement syndrome, and bilateral knee osteoarthritis, due to the February 10, 2005 employment injury.¹²

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds that the counsel's arguments are not substantiated.

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 compensation for wage-loss and medical benefits effective November 12, 2013 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injuries.

¹⁰ *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹¹ *T.F.*, 58 ECAB 128 (2006); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹² *D.U.*, Docket No. 10-144 (issued July 27, 2010); *Richard A. Neidert*, 57 ECAB 474 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 23, 2014 is affirmed.

Issued: February 26, 2015
Washington, DC

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

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

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