

On appeal appellant argues that OWCP erred in terminating her wage-loss compensation.

FACTUAL HISTORY

On March 20, 2013 appellant, then a 40-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 18, 2013 she sustained insect bites on the right side of her neck while delivering mail. She alleged that, when she opened a mailbox, a swarm of wasps came out and flew into her truck and she began to fan them away. Appellant put the truck in park and got out, moving around to avoid being stung. She then continued to work and noticed a pull from her neck to her right shoulder when she raised her right arm. OWCP accepted the claim for right neck sprain and sprain of the right upper arm, shoulder, and other unspecified sites. By letter dated May 30, 2013, it placed appellant on the periodic rolls for temporary total disability.

In an April 25, 2013 report, Dr. Yusuf A. Mosuro, a treating Board-certified anesthesiologist and pain specialist, diagnosed right neck sprain and right upper arm and shoulder sprains. A physical examination revealed tenderness on palpation of the right trapezius and posterior neck, reduced cervical spine motion, moderate right shoulder tenderness on palpation, and negative Hawkin's and empty can tests. Range of motion for the right shoulder included 160 degrees forward flexion and abduction and 60 degrees internal rotation. A review of an April 22, 2013 functional capacity evaluation (FCE) reflected that appellant was capable of sedentary work.

On May 23, 2013 Dr. Mosuro diagnosed right neck sprain and right upper arm and shoulder sprains. A review of a magnetic resonance imaging (MRI) scan revealed C4-5 disc protrusion, C5-6 bulging disc, right shoulder tendinitis, and less than grade 1 partial rotator cuff thickness tear. Dr. Mosuro noted that appellant complained of right shoulder and neck reduced motion, discomfort, stiffness, and pain. He opined that appellant was disabled from work as she was unable to lift more than 10 pounds.

On June 24, 2013 OWCP referred appellant for a second opinion evaluation with Dr. James E. Butler, III, a Board-certified orthopedic surgeon, to determine appellant's disability status. In his July 8, 2013 report, Dr. Butler, based upon a review of appellant's history of injury, objective findings, and physical examination, diagnosed cervical sprain, right C4-5 cervical disc disorder with stenosis, right shoulder sprain, right shoulder adhesive capsulitis, and right shoulder partial rotator cuff thickness tear. He related that physical examination revealed right C4-7 tenderness, right trapezius spasms, decreased cervical range of motion, and right shoulder tenderness on palpation. Dr. Butler noted that appellant's C4-5 cervical disc disorder and right shoulder partial rotator cuff thickness tear were unrelated to the accepted employment injury as they were preexisting. Based on a review of a July 8, 2013 FCE, Dr. Butler found that appellant was disabled from her date-of-injury job as she tested at a sedentary demand level. He related that appellant's functional capacity evaluation (FCE) showed that she had a limitation of no lifting more than 10 pounds.

In a July 8, 2013 FCE appellant was evaluated by Dr. Butler to determine her work capability. The report stated that she provided reliable effort and declined to perform tests involving carrying 20 and 50 pounds, pushing and pulling carts up to 40 pounds and up to 100

pounds, full, mid, low and high lifts, immediate right reach, right reach overhead, and right handling. Based on the testing performed, Dr. Butler determined that appellant was unable to perform the duties of a city mail carrier as her physical capacity was determined to be medium and she tested at a sedentary job level.

In reports dated September 9 and 17, 2013, Dr. Louis Train, an examining physician Board-certified in family practice, provided a history of injury, reviewed diagnostic tests, and performed a physical examination. Review of a May 8, 2013 MRI scan study revealed right shoulder cuff grade 1 partial thickness tear and tendinitis while an April 25, 2013 cervical MRI scan revealed a C5-6 disc bulge and C4-5 disc protrusion. Physical examination findings from September 12 and 30, 2013 included cervical paravertebral muscle tenderness, right dermatomes for C4-8 and T1 had decreased pinprick sensation, and tenderness on the longhead biceps tendon and supraspinatus tendon which were more tender on the September 17, 2013 examination. Dr. Train opined that in addition to spraining appellant's neck and cervical discs, she sprained her right scalenus muscle which pinched her thoracic outlet nerves resulting in thoracic outlet syndrome. Diagnoses included right cervical sprain and right upper arm and shoulder sprain. Dr. Train concluded that appellant continued to be disabled from work. In his September 17, 2013 note, he found that she tested positive for fibromyalgia and opined that she also injured the right wrist long flexors due to swelling which was causing right carpal tunnel syndrome.

In an October 2, 2013 initial evaluation report, Dr. James D. Key, a Board-certified orthopedic surgeon, noted that appellant was seen for neck and right shoulder pain complaints. He provided a history of the employment injury and her duties as a mail carrier. A review of a September 25, 2013 MRI scan revealed a supraspinatus tendon partial articular surface tear. Diagnoses included right shoulder internal derangement and cervical disc displacement as the result of her accepted March 18, 2013 employment injury.

In an October 14, 2013 report, Dr. Train's physical examination findings were unchanged from prior reports. He diagnosed thoracic outlet syndrome which was causing deltoid epicondylar and thenar muscle weakness and reducing the nerve supply to the right hand muscles. Dr. Train requested that OWCP upgrade appellant's accepted conditions to include right shoulder internal derangement and thoracic outlet syndrome based on the abnormal right shoulder physical examination findings, abnormal neurological findings, and history of the injury.

On November 11 and December 9, 2013 Dr. Train opined that appellant continued to be disabled from work and provided physical examination findings similar to those provided in his prior reports. He diagnosed bilateral carpal tunnel syndrome.

On January 8, 2014 OWCP received a January 3, 2014 preliminary investigative report by the employing establishment's Office of Inspector General. It noted that surveillance video of appellant during the period October 29 to December 12, 2013 showed her driving, jogging, walking, entering and exiting her truck, sitting for extended periods of time in her truck, carrying bags and boxes, after shopping carrying a large bag and large box upstairs to her apartment, and walking without using the guard rails or any other type of assistance. The report related that the activities she was seen performing were consistent with Dr. Butler's report and recommendation that she was capable of working an eight-hour day with restrictions.

On January 16 and 23 and February 3, 2014 OWCP received Dr. Train's January 6, 2014 progress report which opined that appellant continued to be disabled due to her employment injuries which included thoracic outlet syndrome. Physical examination findings were unchanged.

On January 10, 2014 OWCP referred appellant to Dr. James Hood, a Board-certified orthopedic surgeon, to resolve a conflict in the medical opinion evidence between Drs. Mosuro and Butler regarding appellant's ability to return to work.

In a January 29, 2014 report, Dr. Hood, based upon a review of appellant's history of injury, statement of accepted facts, and physical examination diagnosed resolved cervical spine sprain without radiculopathy, right shoulder aggravation or bursitis/impingement syndrome, and right shoulder supraspinatus syndrome/partial rotator cuff tear. He related that appellant's physical examination revealed no trapezial or paracervical spasm, normal upper extremities strength, and slight give-way right deltoid weakness secondary to pain complaints. Cervical range of motion was 40 degrees extension/flexion, 60 degrees right rotation, and 80 degrees left rotation. Range of motion for the right shoulder was 90 degrees abduction, 30 degrees adduction and extension, and 80 degrees flexion, internal rotation, external rotation, and passive motion. Dr. Hood opined that appellant continued to have residuals of her right shoulder condition due to limited range of motion, tenderness, and pain complaints. He further opined that she was disabled from her date-of-injury job, but was capable of working an eight-hour day with restrictions for her right upper extremity. Restrictions included occasional lifting from floor to waist of up to 10 pounds, no overhead lifting or repetitive work, and no other type of overhead activity.

In a February 3, 2014 report, Dr. Train provided a history of the work injury, reviewed diagnostic tests, and performed a physical examination. Physical examination findings were unchanged from prior reports. Dr. Train opined that appellant continued to be totally disabled from working due to her employment injuries.

By decision dated March 21, 2014, OWCP denied appellant's request to expand her claim to include the conditions of carpal tunnel syndrome, cubital tunnel syndrome, cervical radiculopathy, brachioplexopathy or other muscle, or peripheral nerve pathology as being causally related to the accepted March 18, 2013 injury based upon the medical opinions of Dr. Hood.

In a March 26, 2014 report, Dr. Train reiterated physical examination findings from prior reports and his opinion that appellant was totally disabled due to injuries sustained on March 18, 2013. He noted that the plan was to upgrade her accepted conditions to include thoracic outlet syndrome and rotator cuff tear.

On April 4, 2014 OWCP received Dr. Train's February 27, 2014 report which was unchanged from prior reports concerning appellant's continued total disability from work and which opined that she also sustained thoracic outlet syndrome and rotator cuff tear due to the March 18, 2013 employment injury. It thereafter received his March 31, 2014 report which reiterated opinions and findings from his prior reports.

In April 7 and 28, May 15, and 27, 2014 reports, Dr. Train continued to find appellant totally disabled due to her employment injuries which he opined should be expanded to include additional conditions. Physical examination findings were unchanged. Diagnoses included right neck strain and right shoulder sprain.

In a letter dated July 18, 2014, OWCP informed appellant that a copy of the January 3, 2014 investigative report, including a video, had been provided to Dr. Hood for review and addendum to his March 3, 2014 report.³

In an August 5, 2014 addendum, Dr. Hood noted that he reviewed a transcript and video provided by OWCP. Based on his review of the video, he concluded that it appeared appellant no longer had any significant residuals from her accepted employment injuries and she was capable of performing the duties of city carrier with no restrictions.

In an August 8, 2014 work capacity evaluation (Form OWCP-5c), Dr. Hood indicated that appellant was capable of returning to her job as a city mail carrier with no restrictions.

In an August 13, 2014 report, Dr. Train described how the March 18, 2013 employment injury occurred and reviewed the prior MRI scans. He opined that, based on review of MRI scan cervical findings, physical examination, and employment injury history, that appellant's accepted conditions should be expanded to include cervical herniated nucleus pulposus. Dr. Train explained that as a result of her attempting to defend herself from the wasp attack that she sustained a cervical herniated nucleus pulposus in addition to the accepted neck sprain and right shoulder sprain.

On September 12, 2014, OWCP received a July 28, 2014 FCE study, conducted by Dr. Pleshette Wiggins-Johnson, a chiropractor, which found that appellant was capable of performing a job in the medium physical demand category. The report related that the job of mail carrier is classified as in the heavy physical demand.

On September 18, 2014 OWCP issued a notice proposing to terminate appellant's wage-loss compensation benefits because her work-related disability had ceased. It found the weight of the medical opinion evidence rested with the opinion of Dr. Hood, an impartial medical examiner.

Following the proposal to terminate her benefits, OWCP received a September 23, 2014 report by Dr. Navarro C. Stafford, a treating physician, who diagnosed compensable injuries of right neck strain, right shoulder/arm sprain, and right rotator cuff syndrome. Physical

³ By letter dated February 28, 2014, appellant requested copies of the documents from her case record. On March 27, 2014 OWCP sent appellant a copy of the imaged portion of her case record, which would have included the January 3, 2014 OIG report. As the Board noted in *F.S.*, Docket No. 11-863 (issued September 26, 2012) and in *P.S.*, Docket No. 13-1018 (issued June 19, 2014) the investigative practices of an employing establishment's inspection service, including obtaining surveillance videos, are not within the jurisdiction of the Board. However, the Board has noted that although video footage may be of some value to a physician asked to render a medical opinion, it may also be misleading if material facts are omitted. Thus, OWCP is obliged to notify the claimant when such footage is given to a physician and, upon request, provide a copy of the recording, and a reasonable opportunity to respond to its accuracy. *A.P.*, Docket No. 13-30 (issued March 18, 2013).

examination findings included tenderness in the cervical and trapezius areas, significant tenderness in the right shoulder anterior girdle, and unable to abduct on active movement beyond the horizon plane. Dr. Stafford opined that appellant sustained significant right shoulder and neck injuries from the March 18, 2103 employment injury, which was confirmed by MRI scan studies.

In duty status reports (Form CA-17) dated September 23 and October 17, 2014, Dr. Stafford found appellant totally disabled from work. In an October 7, 2014 report, he reported right trapezius, right cervical, and right deltoid area spasm with tenderness and inability to adduct the right shoulder beyond the horizontal plane. Dr. Stafford diagnosed neck strain, right shoulder strain, partial supraspinatus tendon tear, and subacute deltoid bursitis.

By decision dated October 22, 2014, OWCP finalized the termination of appellant's wage-loss compensation benefits, effective November 5, 2014. It found that the special weight of the medical evidence rested with Dr. Hood, the impartial medical examiner, who reported that she was no longer disabled as a result of the March 18, 2013 employment injury.

In a November 3, 2015 report, Dr. Train opined that appellant's neck strain caused her thoracic outlet syndrome and resulting right upper extremity disability. He noted that her accepted conditions should be expanded to include right carpal tunnel syndrome. In an accompanying Form CA-17, Dr. Train noted that appellant was disabled from working.

Appellant requested reconsideration of the October 22, 2014 termination decision on November 25, 2014.

In a November 25, 2014 Form CA-17, Dr. Stafford indicated that appellant was able to work with restrictions for her right shoulder and arm. In a November 25, 2014 work capacity evaluation form, he diagnosed right rotator cuff strain, neck sprain, and right arm/shoulder sprain. Dr. Stafford found that appellant was capable of working with restrictions for her right shoulder. He also found that she was "pending an upgrade for carpal tunnel syndrome."

In a December 16, 2014 report, Dr. Stafford diagnosed neck strain, right shoulder strain, subacute deltoid bursitis, bilateral carpal tunnel syndrome, and partial supraspinatus tendon tear. He noted the decreased range of motion of the right shoulder and concluded that the continuing problems with the right side of appellant's neck and right shoulder resulted from the March 18, 2013 employment injury. Dr. Stafford added that she continued treatment with a pain management doctor. He concluded that appellant was disabled from work due to neck strain, right shoulder strain, partial tear of supraspinatus tendon, and subacute deltoid bursitis.

On January 8 and 20, 2014 OWCP received copies of a November 17, 2014 report from Dr. Train, who reported that appellant continued to be off from work due to right shoulder and neck problems, which affected her daily living.

By decision dated March 24, 2015, OWCP denied modification of the decision which terminated appellant's wage-loss benefits as the newly submitted evidence was insufficient to overcome the special weight of the medical evidence represented by Dr. Hood, the impartial medical examiner.

LEGAL PRECEDENT -- ISSUE 1

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 employee has disability causally related to 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

Section 8123(a) of FECA provides in pertinent part: 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 who shall make an examination.⁷ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.⁸

ANALYSIS -- ISSUE 1

OWCP referred appellant to Dr. Hood to resolve the conflict in medical opinion between her treating physician, and its second opinion physician, regarding her return to work with restrictions related to her accepted conditions. The Board finds that OWCP properly determined that a conflict existed regarding her capacity to work and that Dr. Hood resolved the conflict in the medical evidence.

Dr. Hood, in his initial January 29, 2014 report, diagnosed resolved cervical spine sprain without radiculopathy, right shoulder aggravation or bursitis/impingement syndrome, and right shoulder supraspinatus syndrome/partial rotator cuff tear. He further opined that appellant was disabled from her date-of-injury position, but was capable of working an eight-hour day with restrictions for her right upper extremity. In an August 5, 2014 addendum, Dr. Hood, based on his review of the video and transcript, concluded that she no longer had any significant residuals from her accepted employment injuries and she was capable of performing the duties of city carrier with no restrictions. In an August 8, 2014 work capacity evaluation form, he indicated that appellant was capable of returning to her job as a city mail carrier with no restrictions. OWCP terminated appellant's wage-loss compensation benefits, effective November 5, 2014, based on Dr. Hood's referee opinion, which it found constituted the weight of the medical evidence.

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

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 5 U.S.C. § 8123(a); *R.C.*, 58 ECAB 238 (2006); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

⁸ *V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

The Board finds that OWCP properly accorded the weight of the medical evidence to Dr. Hood, who based his opinion on the complete medical record, a statement of accepted facts, and a thorough physical examination.

The Board further finds that the additional medical evidence submitted by appellant prior to the termination of wage-loss compensation is insufficient to overcome the weight accorded to Dr. Hood or to create a new medical conflict. Dr. Stafford opined that appellant sustained significant neck and right shoulder injuries as a result of the accepted March 18, 2013 employment injury. Dr. Train provided numerous reports with detailed physical findings and opining that her claim should be expanded to include additional conditions. Dr. Key noted that appellant was seen for right shoulder and neck pain and diagnosed right shoulder internal derangement and cervical disc displacement due to the accepted March 18, 2013 employment injury. Dr. Butler provided physical findings including right C4-7 tenderness, right trapezius spasms, decreased cervical range of motion, and right shoulder tenderness on palpation. No opinion was offered regarding disability. None of the reports from Dr. Train, Dr. Key, Dr. Butler, or Dr. Stafford provide any medical rationale explaining how appellant's disability was attributable to her accepted employment injuries.⁹ Thus, this evidence is of limited probative value as the physicians did not address the relevant issue of whether appellant remained totally disabled due to her accepted March 18, 2013 employment injury.

For the above reasons, the Board finds that OWCP properly terminated appellant's wage-loss compensation, effective November 5, 2014, as the weight of the medical evidence established that she had no disability due to her March 18, 2013 employment injuries.

LEGAL PRECEDENT -- ISSUE 2

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.¹⁰

The Board has noted that in assessing medical evidence the weight of such evidence is determined by its reliability, its probative value, and its convincing quality. The factors which enter in such an evaluation include 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 the analysis manifested and the medical rationale expressed in support of the physician's opinion.¹¹

⁹ *F.T.*, Docket No. 09-919 (issued December 7, 2009); *Richard A. Neidert*, 57 ECAB 474 (2006) (a medical opinion not fortified by medical rationale is of little probative value). *See also Virginia Davis-Banks*, 44 ECAB 389 (1993) (opinions not addressing the relevant issue of the case are of diminished probative value).

¹⁰ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

¹¹ *Gary R. Sieber*, 46 ECAB 215 (1994).

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established any disability causally related to her work-related conditions on or after November 5, 2014.

Following OWCP's termination of appellant's wage-loss compensation, effective November 5, 2014, the burden of proof shifted to appellant to demonstrate that she continued to be disabled from work on and after November 4, 2014 due to the accepted injuries.¹²

Subsequent to the October 22, 2014 decision terminating her wage-loss compensation, appellant submitted reports from Drs. Stafford and Train. In a November 3, 2015 report, Dr. Train diagnosed thoracic outlet syndrome and requested expansion of her claim to include right carpal tunnel syndrome. He also opined that she was totally disabled in an attached November 3, 2015 CA-17 form and in a November 17, 2014 report. In his report, Dr. Train attributed appellant's disability to neck and right shoulder problems. Dr. Stafford, in a November 25, 2014 CA-17 form, concluded that appellant was capable of working with restrictions. He subsequently changed his opinion and concluded, in a December 16, 2014 report, that appellant was totally disabled from working. Dr. Stafford attributed the disability to partial supraspinatus tendon tear, subacute deltoid bursitis, and right shoulder and neck strain. The Board notes that OWCP has not accepted the conditions of partial supraspinatus tendon tear, subacute deltoid bursitis, thoracic outlet syndrome, or right carpal tunnel syndrome as due to the March 18, 2013 employment injury. Neither Dr. Stafford nor Dr. Train offered any rationale explaining how appellant's disability was causally related to her accepted March 18, 2013 employment injury. To be of probative value, a physician's opinion on causal relationship should be one of reasonable medical certainty.¹³ As neither Dr. Stafford nor Dr. Train provided any rationale or opinion explaining how the conditions they diagnosed and resulting disability were causally related to the accepted March 18, 2013 employment injury, their reports are insufficient to support disability or create a conflict with Dr. Hood.

The Board finds that OWCP properly denied her claim for wage-loss compensation on and after November 5, 2014. Appellant has not submitted any reasoned medical opinion evidence showing that her disability on or after November 5, 2014 was the result of her accepted right neck sprain and sprain of the right upper arm, shoulder, and other unspecified sites. Consequently, the Board finds that appellant did not establish that she had any employment-related disability after November 5, 2014.

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.

¹² *Virginia Davis-Banks*, *supra* note 9.

¹³ *See Beverly R. Jones*, 55 ECAB 411 (2004).

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation, effective November 5, 2014, as she had no work-related disability. The Board further finds that appellant failed to meet her burden of proof to establish any continuing work-related disability on or after November 5, 2014.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 24, 2015 and October 22, 2014 are affirmed.

Issued: June 15, 2016
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board