



appellant has established that she had continuing disability caused by residuals of her accepted right shoulder condition following the termination of compensation benefits on November 18, 2014.

### **FACTUAL HISTORY**

On October 5, 2009 appellant, a 54-year-old modified letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 24, 2009 she injured her right shoulder while unloading pallets containing parcels of mail. OWCP accepted the claim for tear of the supraspinatus tendon of the right shoulder. Appellant stopped work in November 2009. She received disability compensation on the supplemental rolls beginning January 19, 2010 and on the periodic rolls beginning February 2, 2010.

Appellant underwent OWCP-authorized right shoulder surgery on January 28, 2010, which included rotator cuff repair and acromioplasty. The surgery was performed by Dr. John M. Fenlin, Board-certified in orthopedic surgery. In a report dated September 1, 2010, he related that appellant could work without restrictions. Dr. Fenlin noted that she would continue medical treatment with Dr. Scott M. Fried, an osteopathic physician.

OWCP wrote to Dr. Fried on September 24, 2010 noting that appellant had undergone surgery on January 28, 2010 for her work-related injury. It requested that he provide an opinion as to whether she could return to work. By report dated October 7, 2010, Dr. Fried related that appellant's right shoulder movement was much improved since her surgery, but she still had persistent pain from the right lateral neck, to the shoulder, arm, and wrist, as well as overuse syndrome of the left shoulder. He concluded that she had multiple other conditions and that she could not be released to full-duty work.

Appellant continued to treat with Dr. Fried. In a report dated September 26, 2013, Dr. Fried related that her right shoulder pain continued. He related that appellant had trouble lifting even a gallon of milk, that she had weakness in her arm, and her symptoms were progressing. Dr. Fried related that on physical examination her right shoulder range of motion was good, but very painful, especially with abduction and internal rotation, abduction was slow and difficult. He also related that appellant's right shoulder was very tight and tender. Dr. Fried concluded that her shoulder pain was not manageable for performance of a full day's work.

In an August 26, 2014 report, Dr. Fried advised that appellant had ongoing pain in her right shoulder, which increased with heightened activity and radiated up to her neck and down her right arm. He reported that she rated her pain as ranging from a 3 to a 7 on a scale of 1 to 10. Dr. Fried advised that appellant should modify her activities and noted that she had less pain when she stayed within her physical limitations. He opined that she remained limited and symptomatic and was unable to return to regular work activities. Dr. Fried recommended that appellant undergo functional capacity testing to evaluate her capabilities and limitations; he advised that this would clarify her limitations regarding her work activity. He opined that she required further treatment for her right shoulder condition, including a home therapy program, and continued lifestyle and behavior modifications.

In order to determine appellant's current condition and ascertain whether she still had residuals from her accepted right shoulder conditions, OWCP referred her for a second opinion examination with Dr. Noubar A. Didizian, Board-certified in orthopedic surgery. In a September 25, 2014 report, Dr. Didizian asserted that appellant had a successful repair of the right rotator cuff and that clinically she had recovered. He noted that Dr. Fenlin concurred in this opinion. Dr. Didizian further noted that Dr. Fenlin had advised that appellant could return to work with no restrictions regarding her right shoulder and did not require any further medical treatment.

Regarding appellant's physical examination, Dr. Didizian related that she had no right shoulder symptoms at rest, and that she had good range of motion. He related her complaints that lifting grocery bags could result in soreness. Physical examination of the right shoulder showed matching flexion and external rotation from right to left, minimal loss of abduction and internal rotation on the right. Dr. Didizian related that the drop-arm and superior labral tear from anterior to posterior (SLAP) tests were negative, with good strength, and no referral pain. The Neer test resulted in soreness globally on the right. Dr. Didizian reviewed appellant's x-ray and magnetic resonance imaging scan examinations and concluded that based on appellant's physical examination, the review of her medical records, and her history of injury, her rotator cuff tear was surgically repaired with good results.

Dr. Didizian opined that appellant had fully recovered from the right shoulder rotator cuff tear. He noted that she might have some restrictions regarding an accepted bilateral carpal tunnel condition. Dr. Didizian opined, however, that he had only been asked to make findings regarding whether appellant's accepted right rotator cuff condition had resolved. He reiterated that she did not have any restrictions related to the September 2009 right shoulder injury.

On October 15, 2014 Dr. Didizian provided OWCP with an amended work capacity evaluation form, which indicated that appellant was capable of performing her usual job with the following work restrictions: no repetitive movements of the right wrist and elbow for more than six hours; no pushing and pulling exceeding 30 pounds for more than six hours; and no lifting exceeding 20 pounds for more than six hours.<sup>3</sup>

On October 17, 2014 OWCP issued a notice of proposed termination of wage-loss compensation and medical benefits. It found that the weight of the medical evidence, as represented by Dr. Didizian's opinion, established that appellant's accepted right shoulder condition had resolved and that she had no work-related residuals stemming from these conditions.

By decision dated November 18, 2014, OWCP terminated appellant's wage-loss compensation and medical benefits, finding that Dr. Didizian's opinion represented the weight of the medical evidence.<sup>4</sup>

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<sup>3</sup> The Board notes that appellant was performing in a modified-duty position, with restrictions on October 5, 2009, the date of injury.

<sup>4</sup> OWCP found that, with regard to her bilateral carpal tunnel syndrome, this issue should be adjudicated under the separate claim accepted by OWCP for that condition.

In a report dated November 17, 2014, received by OWCP on December 1, 2014, Dr. Fried expressed his disagreement with Dr. Didizian's opinion that appellant had fully recovered from her torn right rotator cuff injury. He reported that she had evidence of a right shoulder capsulitis with biceps tendinitis and rotator cuff involvement, in addition to evidence of nerve involvement about her shoulder at the brachial plexus as well with long thoracic nerve, and upper trapezial issues consistent again with her shoulder problems. Dr. Fried also noted that appellant had carpal tunnel median neuropathy bilaterally as well as tenosynovitis in both hands and wrists. He recommended sedentary work and opined that she was not capable of repetitive activities or regular and aggressive use of her right shoulder, due to the ongoing significant symptoms.

Dr. Fried advised that the combination of the shoulder and brachial plexus was intermittently involved with the nerves at the brachial plexus, which resulted in ongoing and significant pain. He related that appellant had many positive objective findings, including upper trapezial spasm, positive Tinel's at the supraclavicular and infra-clavicular fossa, and ongoing rotator cuff stiffness and weakness. Dr. Fried also noted positive Roes testing, Hunter testing, Phalen's testing, and Tinel's testing, all of which were consistent with ongoing issues regarding her right upper extremity and ongoing right shoulder symptomatology. He related that although appellant had surgical intervention and treatment to ameliorate her full thickness rotator cuff tear, her rotator cuff never returned to normal. Dr. Fried reiterated that she had ongoing evidence of her capsulitis of the shoulder as well as rotator cuff weakness. He opined that appellant did not have a normal right shoulder and arm, and that returning to work without specific testing in a controlled environment would be dangerous to her and her coworkers. Dr. Fried advised that to return her to work without restrictions was not a medically well-reasoned decision and would result in furthering her injuries. He asserted that appellant had ongoing severe and substantial limitations and ongoing dysfunction and disability, which were directly and causally related to her accepted right shoulder injury, in addition to her bilateral carpal tunnel syndrome.

On August 4, 2015 appellant, through counsel, requested an oral hearing before an OWCP hearing representative, which was held on March 7, 2016.

By decision dated May 29, 2015, OWCP's hearing representative affirmed the November 17, 2014 termination decision. He found that the medical evidence appellant presented, *i.e.*, Dr. Fried's November 17, 2014 report, did not constitute medical evidence sufficient to negate OWCP's finding that Dr. Didizian's opinion represented the weight of the medical evidence.

By letter dated July 7, 2015, received July 13, 2015, counsel requested reconsideration.

In a June 3, 2015 report, received by OWCP on July 13, 2015, Dr. Fried advised that appellant was working modified duty consisting of computer keying, answering telephones, writing, and casing for about two hours a day. As part of her assignments, appellant was also required to carry trays and buckets, lift bins, and thumb through letters. Dr. Fried reiterated that she had ongoing residuals from her accepted September 24, 2009 rotator cuff injury, specifically supraspinatus tendon right shoulder as well as brachial plexus injury involving the nerves that surrounded the shoulder, and that she had ongoing residual from that injury in the right shoulder. He advised that his most recent examination clearly showed evidence of pain, discomfort, and

dysfunction, with limited ability of the rotator cuff to function as well as severe nerve injury; he asserted that this was attributable to the September 24, 2009 injury. Dr. Fried opined that although appellant had surgical intervention for her rotator cuff, her physicians were not able to restore normal function and that she experienced ongoing disability and dysfunction with respect to her rotator cuff and her brachial plexus nerves. He advised that this symptomatology was supported by overwhelming objective findings and ongoing medical examinations which showed consistent dysfunction despite attempts at improvement. Dr. Fried related that, while appellant could perform limited activities, she was not able to perform her previous work activities. He opined that she remained disabled from her ongoing right shoulder symptoms and that her disability was the result of the September 24, 2009 work incident.

By decision dated December 10, 2015, OWCP denied modification of the May 29, 2015 termination decision finding that Dr. Fried's June 3, 2015 report did not outweigh the opinion of the second opinion examiner, Dr. Didizian who provided a rationalized medical opinion that all residuals from her supraspinatus right shoulder tear had ceased. It determined that Dr. Didizian's opinion continued to represent the weight of the medical evidence.

### **LEGAL PRECEDENT -- ISSUE 1**

Under FECA, once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>5</sup> After it has determined that an 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.<sup>6</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup>

Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>8</sup> 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.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

OWCP based its decision to terminate appellant's wage-loss compensation and medical benefits on the opinion of Dr. Didizian, OWCP's second opinion physician, who found that her accepted tear of the supraspinatus tendon of the right shoulder had resolved. Dr. Didizian noted good range of motion, no symptoms at rest, and negative drop-arm and SLAP tests. He properly reviewed appellant's medical record, including the report from her treating surgeon, Dr. Fenlin.

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<sup>5</sup> *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001); *Alice J. Tysinger*, 51 ECAB 638, 645 (2000).

<sup>6</sup> *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

<sup>7</sup> *See Del K. Rykert*, 40 ECAB 284 (1988). *L.J.*, Docket No. 14-1682 (issued December 11, 2015).

<sup>8</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>9</sup> *Id.*

Dr. Didizian also conducted a physical examination of her and extensive examination findings. He concluded that, based upon the record and his physical examination, appellant had a successful repair of the right rotator cuff and that clinically she had recovered. Dr. Didizian further opined that she could return to work and had no restrictions related to the September 2009 right shoulder injury.

The factors that comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of physical examination, the accuracy, or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>10</sup> As Dr. Didizian explained his review of the medical evidence and the findings of his physical examination, his opinion provides sufficient detail to constitute a rationalized medical opinion as to why the accepted tear of the supraspinatus tendon of the right shoulder condition caused by a September 24, 2009 employment injury had resolved without residuals. His opinion is sufficiently probative, rationalized, and based upon a proper factual background<sup>11</sup> and it represents the weight of the medical evidence at the time of its May 29, 2015 termination decision.<sup>12</sup> OWCP has met its burden of proof to terminate. Thus, the Board will affirm OWCP's December 10, 2015 decision with regard to the termination of compensation.

### **LEGAL PRECEDENT -- ISSUE 2**

As OWCP met its burden of proof to terminate compensation benefits on May 29, 2015, the burden shifted to appellant to establish any continuing disability causally related to the accepted condition.<sup>13</sup>

Causal relationship is a medical issue. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>14</sup> To prevail, the claimant must establish by the weight of the reliable, probative, and substantial evidence that he or she had an employment-related disability, which continued after termination of compensation benefits.<sup>15</sup>

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<sup>10</sup> *Nicolette R. Kelstrom*, 54 ECAB 570 (2003); *Anna M. Delaney*, 53 ECAB 384 (2002); *see also G.I.*, Docket No. 14-1857 (issued September 9, 2015).

<sup>11</sup> *A.B.*, Docket No. 16-0480 (issued August 29, 2016).

<sup>12</sup> *See C.P.*, Docket No. 15-0617 (issued August 4, 2015).

<sup>13</sup> *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

<sup>14</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>15</sup> *See J.A.*, Docket No. 15-0908 (issued August 6, 2015).

Section 8123(a) of FECA provides in pertinent part: “If there is a 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.”<sup>16</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that the case is not in posture for decision as to whether appellant had continuing disability causally related to her accepted employment injury after November 18, 2014.

Following the termination of wage-loss compensation and medical benefits on November 18, 2014 OWCP received additional medical evidence. The Board finds that there is now a conflict in the medical evidence between the opinions of Dr. Didizian and Dr. Fried concerning whether appellant is still entitled to compensation for continuing disability and whether she continued to experience residuals from her accepted tear of the supraspinatus tendon of the right shoulder condition.<sup>17</sup>

As previously noted, Dr. Didizian opined in his September 25, 2014 report that appellant had a successful repair of the right rotator cuff and that she had fully recovered from her right shoulder tear. Dr. Fried in his last report of August 26, 2014, prior to the termination of her compensation benefits, related that she should undergo a functional capacity evaluation to determine her ability to return to work.

However in his reports following the termination of compensation benefits, dated November 17, 2014 and June 3, 2015, Dr. Fried related that appellant had not fully recovered from her right shoulder injury. He reported that she had ongoing and significant pain in her right shoulder; despite medication management and treatment, she continued to have ongoing, significant symptoms, which were supported by multiple objective findings. Dr. Fried advised that appellant also had ongoing severe, substantial limitations, and ongoing dysfunction and disability, which were directly and causally related to her accepted right shoulder injury. He advised that, in light of these findings, her right shoulder condition had not resolved.

The Board finds that a conflict in medical opinion arose following the termination of compensation benefits between Dr. Fried and Dr. Didizian as to whether appellant’s accepted condition caused continuing disability.<sup>18</sup>

Accordingly, the Board will set aside the December 10, 2015 OWCP decision with regard to the issue of continuing disability. The case will be remanded for referral of appellant, the case record, and a statement of accepted facts to an impartial medical examiner to resolve the conflict in the medical evidence regarding whether she had any continuing disability stemming from her accepted tear of the supraspinatus tendon of the right shoulder condition, following the

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<sup>16</sup> 5 U.S.C. § 8123(a).

<sup>17</sup> *Id.*

<sup>18</sup> *See D.P.*, Docket No. 15-0318 (issued September 8, 2015).

termination of compensation benefits. After such further development of the record as it deems necessary, OWCP shall issue a *de novo* decision.

**CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective November 18, 2014. The case is not in posture for decision as to whether appellant had continuing disability after November 18, 2014. After such further development as necessary, OWCP shall issue a *de novo* decision regarding her continuing disability after November 18, 2014.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 10, 2015 decision of the Office of Workers' Compensation Programs is affirmed regarding the termination of compensation, effective November 18, 2014. The December 10, 2015 decision is set aside and the case is remanded to OWCP for further action consistent with this decision of the Board regarding the issue of continuing disability.

Issued: November 21, 2016  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board