

shoulder bursitis and cervical stenosis had ceased without residuals; and (2) whether appellant established continuing residuals of the accepted right shoulder and cervical spine conditions on and after May 21, 2015.

FACTUAL HISTORY

OWCP accepted that on March 30, 2013 appellant, then a 57-year-old distribution machine clerk, sustained traumatic bursitis of the right shoulder when he stepped on a plastic strap and fell from a platform down three steps. He attempted to break his fall by extending his right arm. Appellant sought emergency room treatment on April 1, 2013. Dr. John Lawrie, an attending physician Board-certified in emergency and internal medicine, diagnosed traumatic bursitis of the right shoulder. Imaging studies of the right shoulder were within normal limits. Dr. Mikhail Azrilevich, an attending Board-certified internist, diagnosed status post occupational right shoulder injury with left knee pain.³ Appellant accepted a modified-duty position on April 26, 2013.

On May 20, 2013 Dr. Gupta diagnosed a right rotator cuff partial tear, and administered an injection. He prescribed physical therapy on June 17, 2013.⁴

On December 17, 2013 Dr. Mark D. Lazarus, an attending Board-certified orthopedic surgeon, performed arthroscopic debridement of the right shoulder labrum, subacromial decompression, and rotator cuff repair. OWCP authorized the procedure.

Appellant received compensation on the supplemental rolls from December 14, 2013 to May 21, 2015. Dr. Lazarus found appellant able to perform full-time modified duty as of April 14, 2014, but appellant did not return to work. He continued to participate in physical therapy through November 2014.

In a November 12, 2014 report, Dr. Dorota Gribbin an attending Board-certified physiatrist, diagnosed right shoulder pain and cervicgia. On December 3, 2014 she noted obtaining electrodiagnostic studies showing right C5 radiculopathy and right carpal tunnel syndrome. Dr. Gribbin prescribed physical therapy on December 10, 2014, noting that appellant required further diagnostic studies on the cervical spine. She administered a cortisone injection on December 15, 2014. On December 29, 2014 Dr. Gribbin diagnosed cervical stenosis, right shoulder joint pain, cervicgia, soft tissue pain in the right shoulder region, right carpal tunnel syndrome, and tension headache. She administered trigger point injections on January 30 and February 16, 2015.⁵

³ Dr. Sunny Gupta, an attending osteopathic physician Board-certified in family medicine and sports medicine, ordered a left knee x-ray on April 18, 2013, noting that appellant developed left knee pain after he fell at work on March 30, 2013.

⁴ A July 22, 2013 magnetic resonance imaging (MRI) scan showed a full-thickness tear of the supraspinatus tendon.

⁵ February 6, 2015 electromyography (EMG) and nerve conduction velocity (NCV) studies showed that appellant's right carpal tunnel syndrome had resolved completely.

A December 5, 2014 MRI scan showed a “large focal partial tear involving the supraspinatus tendon.”

On January 16, 2015 OWCP obtained a second opinion from Dr. Robert A. Smith, a Board-certified orthopedic surgeon. Dr. Smith reviewed the medical record and a statement of accepted facts. On examination of the right upper extremity, he found full motion of the shoulder, satisfactory strength, and a normal neurologic examination. Dr. Smith diagnosed resolved traumatic bursitis and rotator cuff tear of the right shoulder, both completely ameliorated by the December 17, 2013 surgery. He noted that there “was never any accepted condition for this case with respect to [appellant’s] neck or neurological structures.” Dr. Smith explained that any “continued treatment, testing, work restrictions, or disability for the neck, radiculopathy, or carpal tunnel syndrome [were] not related to the March 30, 2013 incident, but to nonindustrial factors.” He opined that appellant had reached maximum medical improvement, and could return to full duty with no restrictions related to the accepted injuries.

By notice dated March 4, 2015, OWCP advised appellant of its proposal to terminate his wage-loss compensation and medical benefits as the accepted right shoulder conditions had ceased without residuals, based on Dr. Smith’s opinion as the weight of the medical evidence. Appellant was afforded 30 days to submit evidence or argument.

On March 12, 2015 OWCP expanded the claim to accept cervical spinal stenosis.

In a March 18, 2015 letter, counsel asserted that Dr. Smith’s report could not represent the weight of the medical evidence as it predated OWCP’s acceptance of cervical spinal stenosis. Although Dr. Smith opined on January 16, 2015 that there were no accepted cervical spine or neurologic conditions, OWCP accepted cervical spinal stenosis on March 12, 2015.

Appellant submitted March 2 and 16, 2015 reports from Dr. Gribbin finding improved right shoulder pain, right carpal tunnel syndrome, and cervical stenosis requiring additional treatment. In a March 23, 2015 report, Dr. Gribbin disagreed with Dr. Smith’s opinion that the accepted conditions had ceased. She explained that appellant’s right upper extremity pain was “directly associated with right-sided C5 radiculopathy” caused by the March 30, 2013 fall.

In an April 1, 2015 letter, counsel contended that OWCP should expand the claim to accept C5 radiculopathy and find a conflict of medical opinion between Dr. Smith, for the government, and Dr. Gribbin, for appellant. He provided reports from Dr. Gribbin dated from April 22 to May 11, 2015, noting continuing right-sided cervical radiculopathy, treated with epidural injections.

By decision dated May 21, 2015, OWCP terminated appellant’s wage-loss and medical compensation benefits effective that day, finding that the accepted right shoulder tendinitis and cervical stenosis had ceased without residuals. It accorded the weight of the medical evidence to Dr. Smith, finding that his opinion was based on a “complete, accurate, and consistent history covering both the factual and medical aspects of [his] case.”

In a May 28, 2015 letter, counsel requested a hearing, held before an OWCP hearing representative on September 11, 2015. At the hearing, counsel asserted that Dr. Smith’s report could not represent the weight of the medical evidence as his opinion predated OWCP’s

acceptance of cervical stenosis. Therefore, his conclusions were predicated on an incomplete factual medical history. He provided reports from Dr. Gribbin dated from May through August 2015 diagnosing right-sided cervical radiculopathy requiring additional treatment.

By decision dated December 9, 2015, an OWCP hearing representative affirmed the May 21, 2015 decision. The hearing representative explained that Dr. Smith's report was sufficient to meet OWCP's burden of proof in terminating appellant's compensation, as there were no disabling residuals of the shoulder injury "and he clearly states there is no causation of the cervical condition as a result of the March 30, 2013 injury." The hearing representative found that OWCP "appropriately afforded the weight of the medical evidence to Dr. Smith, the Board-certified second opinion specialist. The hearing representative also remanded the case "for resolution of the conflicting correspondence concerning the cervical condition based on the medical evidence."

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁶ 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.⁷ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁹ 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.¹⁰

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained traumatic bursitis of the right shoulder when he fell down steps at work on March 30, 2013. On December 17, 2013 appellant underwent arthroscopic debridement of the right labrum, subacromial decompression, and rotator cuff repair. He received compensation for temporary total disability from December 14, 2013 to May 21, 2015.

Dr. Gribbin, an attending Board-certified physiatrist, opined in reports beginning on November 12, 2014 that appellant's continuing right upper extremity pain and paresthesias were caused by cervical radiculopathy sustained in the March 30, 2013 fall. OWCP obtained a second

⁶ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁷ *Id.*

⁸ *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁹ *See T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹⁰ *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

opinion on January 16, 2015 from Dr. Smith, a Board-certified orthopedic surgeon, who opined that the accepted conditions had ceased without residuals, as there was “never any accepted condition for this case with respect to [appellant’s] neck or neurological structures.” However, on March 12, 2015 OWCP expanded the claim to accept cervical spinal stenosis, based on Dr. Gribbin’s opinion.

By notice dated March 4, 2015 and finalized May 21, 2015, OWCP terminated appellant’s medical and wage-loss compensation benefits effective May 21, 2015. It accorded Dr. Smith’s opinion the weight of the medical evidence, asserting that it was based on a complete, accurate, factual, and medical history. Following a September 11, 2015 hearing, at which counsel contended that Dr. Smith’s opinion could not be based on a complete medical history as it predated OWCP’s acceptance of cervical stenosis, OWCP issued a May 9, 2015 decision affirming the termination. However, the hearing representative also remanded the case “for resolution of the conflicting correspondence concerning the cervical condition.”

The Board finds that OWCP did not meet its burden of proof to terminate appellant’s wage-loss and medical compensation benefits. Dr. Smith’s opinion was not based on the complete medical history as available for OWCP at the time it rendered the May 21, 2015 decision. OWCP expanded the claim to accept cervical stenosis on March 12, 2015, after Dr. Smith rendered his opinion on January 16, 2015. The Board notes that the record does not indicate that OWCP attempted to obtain an updated opinion from Dr. Smith that addressed resolution of the accepted condition of cervical stenosis. Therefore, the medical record and statement of accepted facts provided to Dr. Smith were incomplete. It is axiomatic that medical reports based on an incomplete or inaccurate history are of little probative value.¹¹ Therefore, Dr. Smith’s opinion was an insufficient basis for terminating appellant’s compensation. OWCP failed to meet its burden of proof. The May 21, 2015 decision will be reversed, and the case returned to OWCP for reinstatement of all appropriate benefits.

ISSUE 2

As OWCP did not meet its burden of proof in terminating appellant’s wage-loss and medical compensation benefits, issue two regarding appellant’s burden of proof in establishing continuing residuals after the termination, is moot.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant’s wage-loss and medical compensation benefits effective May 21, 2015 as the accepted right upper extremity and cervical spine conditions had ceased without residuals.

¹¹ *Solomon Polen*, 51 ECAB 341 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 9, 2015 is reversed.

Issued: September 1, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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