

**United States Department of Labor
Employees' Compensation Appeals Board**

J.C., Appellant

and

**SOCIAL SECURITY ADMINISTRATION,
Uniontown, PA, Employer**

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**Docket No. 17-0089
Issued: July 18, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 17, 2016 appellant filed a timely appeal from April 28 and September 13, 2016 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective November 25, 2015; and (2) whether appellant met her burden of proof to establish continuing disability after November 25, 2015.

On appeal appellant argues that her case was prematurely closed, that there were delays in her benefit payments, that there were errors in the evaluation of the medical evidence, and that there was improper collusion between the employing establishment and OWCP.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 30, 2013 appellant, then a 50-year-old service representative, filed a traumatic injury claim (Form CA-1) alleging that as she reached on the top of a shelf to retrieve a pamphlet on September 25, 2013, a bundle of pamphlets fell, and while she was trying to keep herself from falling she banged her head on a metal divider post and pulled her right shoulder. OWCP accepted appellant's claim for sprain of the shoulder, upper arm and right rotator cuff; contusion of face, scalp, and neck except eyes; and injury to the right brachial plexus. Appellant continued to work full time, but took time off work when she had flare-ups due the accepted injuries.

OWCP received periodic reports from appellant's treating physician, Dr. Mary Beth Krafty, a Board-certified family practitioner. In a report dated January 9, 2014, Dr. Krafty related appellant's history of injury and noted that she had returned to work on November 4, 2013 with restrictions. Dr. Krafty related that appellant had improved range of motion of the right shoulder, but now had pain and tingling in the right forearm in the ulnar nerve distribution. Appellant's diagnoses were listed as unspecified disorder of the shoulder bursae and tendons, rotator cuff syndrome, and disturbance of skin sensation. On October 9, 2014 Dr. Krafty related that appellant was very depressed about her right arm injury. Appellant had related that her right arm was still painful and was taking too long to recover. Dr. Krafty related on November 17, 2014 that she had changed appellant's medication and that she had good relief from her brachia plexus palsy symptoms. On February 17, 2015 OWCP received a note from Dr. Krafty in which she related that appellant should be excused from work through February 20, 2015 due to exacerbation of her right upper extremity symptoms.

On February 20, 2015 OWCP referred appellant to Dr. Victoria M. Langa, a Board-certified orthopedic surgeon, for a second opinion examination. In a March 11, 2015 report, received by OWCP on March 19, 2015, Dr. Langa reviewed appellant's history of injury and medical treatment. Dr. Langa listed appellant's diagnoses as status post right shoulder injury -- resolved, and symptomatic right cubital tunnel syndrome. She noted that, although appellant was diagnosed with a right brachial plexus injury this had never been confirmed on upper extremity electromyogram/nerve conduction velocity (EMG/NCV) studies. Dr. Langa did note that appellant had a very symptomatic cubital tunnel syndrome at her right elbow which became symptomatic in December 2013, but that appellant's cubital tunnel syndrome was unrelated to the work incident of September 25, 2013. She opined that appellant no longer had any residuals from the September 25, 2013 work injury. Dr. Langa further opined that appellant no longer required any further medical treatment due to her September 25, 2013 work injury, although she may eventually need surgical intervention for her right cubital tunnel syndrome. She concluded that appellant had no restrictions/limitations related to her September 25, 2013 work injury.

On March 20, 2015 OWCP received a February 19, 2015 report wherein Dr. Krafty assessed appellant with injury including brachial plexus (primary), brachial neuritis or radiculitis, chronic pain due to trauma, and generalized anxiety disorder. Dr. Krafty continued to write appellant excuses for intermittent periods of disability due to exacerbation of her right upper extremity symptoms which included hand swelling, muscle spasms, and pain, making it difficult for her to perform her clerical duties.

By letter dated March 23, 2015, OWCP forwarded a copy of Dr. Langa's report to Dr. Krafty for comments. In an April 1, 2015 response, received by OWCP on April 6, 2015, Dr. Krafty noted that she did not believe that Dr. Langa could dismiss the diagnosis of brachial plexus palsy by citing negative EMG/NCV studies, yet diagnose cubital tunnel syndrome from the same negative studies. She noted that EMG/NCV study reports were not fool proof and were only helpful if abnormal findings were recorded. Dr. Krafty related that a referral to a tertiary pain clinic with more intense security testing would be appropriate. Appellant continued to receive treatment from Dr. Krafty, who continued to write appellant excuses from work due to her brachial plexus palsy neuropathy.

OWCP determined that there was a conflict between appellant's treating physician, Dr. Krafty, and the second opinion examiner, Dr. Langa, with regard to whether appellant had any remaining disability or residuals from her accepted employment injuries. By letter dated June 18, 2015, it referred appellant to Dr. Mark Baratz, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a July 9, 2015 report, Dr. Krafty noted that appellant was still wearing a brace on her elbow and wrist. She noted that appellant had a lot of aching and burning in her right elbow, extending down to her lateral forearm due to hypothenar eminence. Dr. Krafty indicated that these symptoms worsened with activity flexing and extending at the window, pressure on lateral head, and doing repetitive clerical work. She noted she was continuing to treat appellant's brachial plexus injury. Dr. Krafty continued to periodically excuse appellant from work.

On August 19, 2015 OWCP received an August 3, 2015 report from the impartial medical examiner, Dr. Baratz, who discussed appellant's employment history, her medical history, and the results of his physical examination. Dr. Baratz listed his impressions as resolved right shoulder injury, resolved traction injury to the right shoulder, and nonwork-related right cubital tunnel syndrome. He concluded that the residuals from the employment injury had resolved based on the fact that appellant stated that there were no current problems with regard to her neck or shoulder and that her examination showed only nerve compression at the right elbow. Dr. Baratz indicated that appellant had no injury-related disability and that she was capable of performing her employment duties. He diagnosed right cubital tunnel syndrome based on a positive Tinel's at the elbow, diminished pinch and grip strength, and an abnormal nerve test which was not medically connected to the employment injury. Dr. Baratz indicated that the prognosis for this condition was excellent as it should respond to surgical release. He did note that appellant described difficulty with respect to dexterity, and noted that these complaints were consistent with right cubital tunnel syndrome.

In a September 1, 2015 report, Dr. Charles Gennaula, a Board-certified neurologist, noted that appellant presented with paresthesia, which began following a work-related accident of "September 25, 2015" [sic]. Dr. Gennaula noted that appellant's recent magnetic resonance imaging (MRI) scan showed some evidence for a cord signal lesion of the right side at C7, and that her examination showed distal weakness in her right upper extremity and some focal sensory loss more ulnar distribution. He noted that given the lack of EMG findings he was not certain that an ulnar surgical procedure would provide relief.

On September 23, 2015 OWCP proposed terminating appellant's wage-loss compensation and medical benefits because she no longer had any residuals or continuing disability from work stemming from her employment injury. It noted the conflict between the opinions of appellant's treating physician, Dr. Krafty, and the second opinion physician, Dr. Langa. Therefore, OWCP determined that the special weight of the medical evidence rested with the well-rationalized opinion of the impartial medical examiner, Dr. Baratz.

In a September 11, 2015 progress report, received by OWCP on September 28, 2015, Dr. Krafty listed the primary assessment as injury of the brachial plexus along with secondary assessments of brachial neuritis or radiculitis and chronic pain due to trauma. In an October 23, 2015 attending physician's report (Form CA-20), she indicated that appellant suffered a brachial plexus injury with decreased sensation right arm which was causally related to the employment injury. Dr. Krafty advised appellant that she could return to work, but clarified that the date appellant was able to resume regular work was undetermined. She concluded that appellant would resume work on November 3, 2015 with limitations.

On October 1, 2015 appellant challenged the proposed notice of termination and OWCP's evaluation of the medical evidence. She also submitted notes signed by Dr. Krafty excusing her absence from work for specific dates from September 21 to November 13, 2015 due to hand cramps and shoulder pain.

An October 16, 2015 MRI scan of appellant's brain and thoracic spine was interpreted by Dr. Gennaula as normal. In a report of the same date, Dr. Gennaula noted that there were no signs of a demyelinating disease. He noted a single lesion which he suspected was more likely a reaction injury and noted that there did not appear to be any significant change on the nerve conduction studies amenable to surgery.

In an October 23, 2015 attending physician's report, Dr. Krafty indicated that appellant had a brachial plexus injury, with decreased sensation in her right arm in ulnar distribution. She checked a box marked "yes" indicating that she believed that the injury was caused or aggravated by appellant's employment activity, and noted that appellant was totally disabled from September 2 through November 4, 2013. She listed the date that appellant could return to regular work as undetermined.

On November 25, 2015 OWCP issued a final termination of compensation. It found that the residuals of the work-related medical condition and disability from work had ceased based upon the medical opinion of the independent medical examining physician, Dr. Baratz, which was afforded the special weight. OWCP therefore terminated appellant's wage-loss compensation and medical benefits, effective that same date.

OWCP received a January 8, 2016 progress note wherein Dr. Gennaula noted that appellant continued to have ongoing paresthesia in her right arm and mild weakness in her right hand which began following an employment-related injury on September 25, 2015. He noted no change on her examination. Dr. Gennaula noted that appellant should continue with current medications in that they seemed to be controlling the symptoms adequately. He noted that she has tolerated work while on the medication.

On January 27, 2016 appellant requested reconsideration. She argued that the medical evidence supported that she had continuing residuals from her employment injury. In support of her request appellant submitted a December 23, 2015 report wherein Dr. Krafty indicated that appellant sustained a right brachial plexus injury on September 25, 2013 at her place of employment. Dr. Krafty noted that appellant continued to work on a full-time basis since November 4, 2014, and continued to have burning, tingling pain from her right shoulder that radiated down her arm. She noted numbness on the underside of appellant's forearm that extended from her elbow to the 4th and 5th digits. Dr. Krafty noted that appellant reported that her hand was clumsy as the day wore on and that she lost dexterity, grip strength, and ability to write legibly. She noted that appellant's work required repetitive arm/hand activity, typing, grasping documents, handling office supplies, and operating office equipment. Dr. Krafty concluded that appellant's injury had not improved, nor had it regressed. She explained that appellant's performance was dependent upon duration of repetition and temperature. Dr. Krafty also noted that because of chronic pain and non-resolution of the injury, appellant battled depression.

In a February 29, 2016 letter, Dr. Krafty indicated that appellant had right brachial plexus palsy neuropathy for which she has prescribed medication, but that the medication caused side effects.

By decision dated April 28, 2016, OWCP denied modification of its prior decisions as the evidence presented on reconsideration was insufficient to alter its November 25, 2015 decision.

On April 29, 2016 appellant submitted a statement in which she argued that there was collusion between the employing establishment and the workers' compensation program, that she needed medication, and that OWCP paid her at an incorrect rate. She also submitted information from the Internet on brachial plexus injuries and an article about Gralise.

In May 11 and August 11, 2016 progress notes received by OWCP on May 31 and September 12, 2016, Dr. Krafty listed appellant's medications, discussed her physical examination, and assessed appellant with injury of the brachial plexus, chronic pain due to trauma, and major depressive disorder.

By decision dated September 13, 2016, OWCP denied modification of its prior decision. It determined that the new evidence was not of sufficient probative value to alter the decision dated April 28, 2016.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.³ To terminate authorization for medical treatment, OWCP must

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991); *see also J.P.*, Docket No. 13-1049 (issued August 16, 2013).

³ *See T.P.*, 58 ECAB 524 (2007).

establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.⁴

Section 8123(a) of FECA provides that, 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.⁵ The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.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

ANALYSIS -- ISSUE 1

OWCP accepted that on September 25, 2013 appellant had an employment injury which resulted in a sprain of the right shoulder, upper arm, and rotator cuff; contusion of the face, scalp, and neck except eyes; and injury to the right brachial plexus. It terminated appellant's wage-loss compensation and medical benefits, effective November 25, 2015, as it determined that appellant no longer had residuals or ongoing disability from the accepted employment injuries. The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits.

OWCP determined that there was a conflict in the medical evidence between the opinions of appellant's treating physician, Dr. Krafty, and the second opinion physician, Dr. Langa. In a February 19, 2015 report, Dr. Krafty indicated that appellant continued to experience intermittent periods of disability due to her brachial plexus injury. However, Dr. Langa opined that appellant no longer had any residuals from the September 25, 2013 work injury, and no longer required any further medical treatment from this injury. He did note that appellant had cubital tunnel syndrome, but opined that this condition was not related to her September 24, 2013 employment injury. OWCP properly determined that a conflict existed between these medical opinions, and thereafter referred appellant to Dr. Baratz for an impartial medical examination.⁸

Dr. Baratz reviewed appellant's medical and employment history and conducted a physical examination. In a report dated August 3, 2015, Dr. Baratz listed his impressions as resolved right shoulder injury, resolved traction injury to the right shoulder, and nonwork-related

⁴ See *I.J.*, 59 ECAB 408 (2008); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁵ 5 U.S.C. § 8123(a).

⁶ 20 C.F.R. § 10.321.

⁷ *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

⁸ *Supra* note 5.

cubital tunnel syndrome. He concluded that the residuals from the employment injury had resolved based on the fact that appellant expressed that there were no remaining problems with regard to her neck or shoulder and that her examination showed only nerve compression at the right elbow. Dr. Baratz indicated that there was no injury-related disability and that appellant was capable of performing her employment duties.

As noted, when a case is referred to an impartial medical examiner to resolve a conflict, the resulting medical opinion, if sufficiently well-reasoned and based upon a proper factual background, must be given special weight.⁹ The Board finds that OWCP properly deferred to Dr. Baratz's well-reasoned report as it was based on a proper factual and medical history, and accurate summarization of the relevant medical evidence, and an accurate adherence to the statement of accepted facts.¹⁰

OWCP had also received September 1 and October 16, 2015 reports from Dr. Gennaula, he failed to address the accepted conditions in his reports. Dr. Gennaula indicated that he suspected that the single lesion shown on appellant's MRI scan was more likely a reaction injury. This opinion is speculative and does not provide conclusive evidence of continuing residuals. The Board has held that medical opinions that are speculative or equivocal in character have little probative value.¹¹

Accordingly, the Board finds that OWCP met its burden of proof in terminating appellant's wage-loss compensation and medical benefits with respect to her injuries arising out of the September 25, 2013 employment incident, effective November 25, 2015.

LEGAL PRECEDENT -- ISSUE 2

When OWCP properly terminates an employee's compensation benefits the burden of proof shifts to the employee to establish that he or she had continuing disability related to the accepted injury.¹²

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.¹³ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁴

⁹ *Garry R. Sieber*, 46 ECAB 215 (1994).

¹⁰ *See R.C.*, Docket No. 16-0697 (issued October 14, 2016).

¹¹ *See L.R. (E.R.)*, 58 ECAB 369 (2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹² *See Manuel Gill*, 52 ECAB 282 (2001).

¹³ *R.D.*, Docket No. 16-0982 (issued December 20, 2016).

¹⁴ *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

ANALYSIS -- ISSUE 2

Given the Board's finding that OWCP properly relied upon the opinion of the impartial medical examiner, Dr. Baratz, in terminating appellant's compensation and medical benefits effective November 25, 2015, the burden of proof shifted to appellant to establish continuing disability after that date.

The Board finds that the evidence does not establish that appellant met her burden of proof to establish that she had continuing disability after November 25, 2015 causally related to the accepted employment injuries. None of the medical evidence received after the termination of benefits established that appellant had continuing disability or residuals from her accepted employment injury of September 25, 2013.

Dr. Gennaula's opinion does not establish continuing disability or residuals causally related to the accepted conditions. In his January 8, 2016 progress note, he related that appellant had ongoing paresthesia in her right arm and mild weakness in her right hand, which began after her September 25, 2015 injury. Dr. Gennaula failed to provide a medical diagnosis in this report and also failed to provide any medical rationale explaining how appellant remained disabled from the accepted conditions. A mere conclusion without the necessary medical rationale to support continuing disability due to the accepted injury is to meet appellant's burden of proof.¹⁵

Dr. Krafty continued to submit reports finding residuals. However, subsequent reports from a physician who was on one side of a medical conflict that has been resolved are generally insufficient to overcome the special weight accorded the impartial medical examiner's report and/or insufficient to create a new medical conflict.¹⁶ Dr. Krafty's reports, after the opinion of Dr. Baratz, merely reiterate her opinion that appellant had residuals from the employment injury. As a party to the original conflict, Dr. Krafty's reports and notes are insufficient to overcome the special weight accorded to the opinion of Dr. Baratz.

Finally, appellant submitted general information with regard to brachial plexus injuries and the drug Galise. The Board has held that such articles lack evidentiary value as they are of general application and not determinative of whether specific conditions are causally related to the particular employment factors in a claim.¹⁷ Appellant also continued to allege that her benefits were paid at an improper pay rate.¹⁸

Accordingly, the Board finds that appellant has not met her burden of proof to establish continuing disability or residuals after the November 25, 2015 termination of benefits.

¹⁵ See *A.D.*, Docket No. 15-618 (issued July 1, 2015).

¹⁶ *Supra* note 4.

¹⁷ *S.G.*, Docket No. 13-1263 (issued September 20, 2013).

¹⁸ OWCP, however, has not issued a final decision regarding that issue. The Board therefore lacks jurisdiction to review the pay rate issue. See *T.O.*, Docket No. 16-1328 (issued March 13, 2017); 5 U.S.C. §§ 501.2(c) and 501.3.

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 met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective November 25, 2015. The Board further finds that appellant did not meet her burden of proof to establish continuing disability after November 25, 2015.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 13 and April 28, 2016 are affirmed.

Issued: July 18, 2017
Washington, DC

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

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

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