

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

S.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Medford, OR, Employer**

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**Docket No. 17-0956
Issued: November 27, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 30, 2017 appellant filed a timely appeal from a November 23, 2016 merit decision 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 over the merits of this case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective November 23, 2016.

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances outlined in the Board's prior decisions are incorporated herein by reference. The relevant facts are set forth below.

¹ 5 U.S.C. § 8101 *et seq.*

On December 30, 1997 appellant, then a 39-year-old mail handler, filed a claim for a traumatic injury (Form CA-1) alleging that on November 27, 1996 he strained his right shoulder in the performance of duty. OWCP accepted the claim assigned File No. xxxxxx850 for right shoulder strain, chronic right shoulder bursitis and tendinitis, and a torn right rotator cuff. Appellant underwent shoulder surgeries on May 26, 1998 and April 13, 1999.

OWCP also accepted appellant's August 1999 occupational disease claim for an acute left shoulder strain, assigned File No. xxxxxx808. It administratively combined the left shoulder claim, assigned File No. xxxxxx808, into File No. xxxxxx850.

A March 13, 1998 magnetic resonance imaging (MRI) scan revealed distal rotator cuff tendinosis with a juxtacortical herniation pit of unclear significance, moderate-to-marked acromioclavicular (AC) joint degeneration with hypertrophy and flattening of the underlying supraspinatus tendon, and some subacromial-subdeltoid bursal fluid indicating inflammatory changes.

In an operative report dated May 26, 1998, Dr. Alan J. Webb, a Board-certified orthopedic surgeon, performed a right rotator cuff repair and decompression. In an April 13, 1999 operative report, he discussed appellant's history of a recurrence of symptoms after the May 26, 1998 rotator cuff repair. Dr. Webb performed a diagnostic right shoulder arthroscopy, noting the presence of "significant scar tissue and bursitis," but a normal rotator cuff repair. He diagnosed tendinitis and bursitis of the right rotator cuff.

In a decision dated April 17, 2002, the Board affirmed a September 19, 2000 OWCP decision finding that appellant had no more than 10 percent permanent impairment of his right arm and a January 20, 2001 decision denying appellant's request for a hearing as untimely.²

Appellant on July 19, 2011 accepted a position as a custodian.³ He worked as a custodian until April 2013, when he underwent an authorized right shoulder subacromial decompression and distal clavicle resection. OWCP paid compensation for total disability beginning April 12, 2013.

In a work restriction evaluation dated November 5, 2013, Dr. Guenther O. Knoblich, a Board-certified orthopedic surgeon, released appellant to return to work without restrictions.

Appellant, on November 25, 2013, filed a claim for wage-loss compensation (Form CA-7) beginning November 3, 2013. By decision dated December 31, 2013, OWCP denied appellant's claim for compensation as Dr. Knoblich had released him to resume work on November 5, 2013.

² Docket No. 01-1438 (issued April 17, 2002).

³ By decision dated June 16, 2011, OWCP reduced appellant's wage-loss compensation to zero based on its finding that his actual earnings as a clerk fairly and reasonably represented his wage-earning capacity. In a decision dated December 31, 2013, it denied his claim for compensation beginning March 7, 2011 as he had not shown that the wage-earning capacity determination should be modified.

Dr. Knoblich, in a January 27, 2014 work capacity evaluation, diagnosed right shoulder rotator cuff sprain and syndrome. He released appellant to his permanent limited-duty employment. Dr. Knoblich related, “The return to regular/usual job is the modified duty he had been assigned for many years. He is not able to return to the original job at injury (mail processing clerk).” Dr. Knoblich completed a February 24, 2014 work capacity evaluation form listing work restrictions.⁴ He reviewed a February 24, 2014 functional capacity evaluation and opined that appellant could not work as a mail processing clerk.⁵

The employing establishment, on March 3, 2014, advised OWCP that the medical evidence of record indicated that appellant was released to modified rather than full duty. It questioned whether it needed to offer appellant limited-duty work. OWCP, on March 4, 2014, responded that he was expected to perform his usual employment absent a medical report supported by objective findings.

Appellant, on April 7, 2014, requested reconsideration of the December 31, 2013 OWCP decision.⁶

In a decision dated November 17, 2014, OWCP denied modification of its December 31, 2013 decision. It found that the January 27 and February 24, 2014 work restriction evaluations from Dr. Knoblich established that appellant was able to return to his position as a modified custodian rather than his date-of-injury position. OWCP consequently accepted that appellant had continued work restrictions as a result of his November 27, 1996 employment injury. It found, however, that he had not sought suitable employment after Dr. Knoblich issued his limited-duty restrictions, and thus was not entitled to compensation beginning January 27, 2014.

On December 1, 2014 appellant requested reconsideration. He maintained that the employing establishment did not offer him a limited-duty position.⁷

By decision dated December 23, 2014, OWCP denied appellant’s request for reconsideration after finding that he had not submitted evidence or raised an argument sufficient to warrant reopening his case for further merit review under 5 U.S.C. § 8128(a). In a January 15, 2015 decision, it vacated its December 23, 2014 decision after finding that it failed to consider appellant’s statement and denied modification of its November 17, 2014 decision.

⁴ Dr. Knoblich determined that appellant could work eight hours per day in his usual modified employment with restrictions of pushing, pulling, and lifting up to five pounds, reaching from the waist to chest only, and no climbing, reaching over the shoulder, or repetitive wrist and elbow movements.

⁵ A February 24, 2014 functional capacity evaluation indicated that appellant could perform sedentary employment duties.

⁶ By decision dated June 5, 2014, OWCP granted appellant a schedule award for an additional one percent permanent impairment of the right upper extremity.

⁷ In another statement received December 1, 2014, appellant asserted that the nurse assigned by OWCP told him that she had contacted the employing establishment and found that it did not have work available. He also asserted that he worked as a nixie clerk rather than a custodian.

Appellant appealed to the Board. By decision dated April 14, 2016, the Board affirmed the November 17, 2014 decision terminating his compensation effective November 3, 2013 as Dr. Knoblich had released appellant to work without restrictions. The Board set aside the January 15, 2015 decision, however, after finding that appellant had established partial disability after November 3, 2013 due to his November 27, 1996 work injury and remanded the case for OWCP to determine the period of disability. OWCP had found appellant able to return to full-duty work. However, reports from Dr. Knoblich dated January 27 and February 24, 2014 reflected continued work restrictions.

OWCP, on June 22, 2016, referred appellant to Dr. Ronald Teed, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated June 30, 2016, Dr. Teed reviewed the history of injury and the medical evidence of record. On physical examination, he measured range of motion, noting that it differed when appellant was distracted. Dr. Teed found tenderness with palpation and motion greater on the right, 4/5 to 5/5 upper extremity strength, and no sensory loss. For the right shoulder, he diagnosed a resolved right shoulder strain, resolved right shoulder bursitis/tendinitis, a torn right rotator cuff, status post three shoulder surgeries, and glenohumeral and AC joint degeneration unrelated to employment. For the left shoulder, Dr. Teed diagnosed chronic left shoulder pain and AC and glenohumeral degeneration unrelated to his injury. He discussed appellant's history of a 1990 right shoulder strain and noted that OWCP had accepted a rotator cuff tear, three right shoulder surgeries, and a left shoulder strain. Dr. Teed found that the shoulder strains should have resolved within six weeks and that his current disability was most likely the result of degenerative conditions. He related:

“[Appellant’s] work injury of 1997 will not be the kind, class or nature of the injury that I would expect a rotator cuff tear. In addition, MRI [scan] findings of the right shoulder on March 13, 1998, showed marked acromioclavicular degeneration and hypertrophy with underlying impingement and rotator cuff arthropathy which is a chronic preexisting degenerative condition. Further evaluation of the left shoulder at a later date showed similar findings. Intraoperative findings of the right shoulder on April 13, 1999, were that of a rotator cuff tear on a more probable than not basis due to preexisting rotator cuff arthropathy about the shoulder and a later failure of the cuff, as there is no evidence of a rotator cuff tear demonstrated on his initial MRI [scan].”

Dr. Teed diagnosed degeneration of the AC and glenohumeral joints “secondary to metabolic and constitutional causes with secondary rotator cuff arthropathy most likely the claimant’s need for treatment and disability.” He opined, “The major etiology of the claimant’s current disability is preexisting degenerative arthritic conditions unrelated to his accepted conditions.” Dr. Teed found that appellant had no residuals of the employment injury and that the “major contributing factor of the claimant’s current presentation is that of preexisting and/or unrelated degenerative conditions across the shoulder.”

OWCP granted wage-loss compensation pursuant to the Board decision of April 14, 2016 from January 27 to May 7, 2014; then pursuant to a schedule award from May 8 to 29, 2014; and again from May 30, 2014 to November 23, 2016.

On September 7, 2016 OWCP notified appellant of its proposed termination of his compensation and medical benefits. It found that Dr. Teed's opinion constituted the weight of the evidence and established that he had no further employment-related condition or residuals.

In a report dated September 20, 2016, Dr. Knoblich diagnosed adhesive capsulitis of the right shoulder.

Appellant, in an October 10, 2016 statement, maintained that Dr. Teed had not performed an examination, but did lift his arm in such a way that caused extreme pain.

By decision dated November 23, 2016, OWCP again terminated appellant's compensation and authorization for medical benefits effective that date. It found that the additional evidence and argument he submitted was insufficient to shift the weight of the evidence from Dr. Teed's report.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁸ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁹

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹⁰ 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.¹¹

ANALYSIS

In the last appeal, the Board affirmed OWCP's termination of appellant's compensation effective November 3, 2013, but further found that appellant had established continuing disability after November 3, 2013 due to his November 27, 1996 employment injury based on reports from Dr. Knoblich. It remanded the case for OWCP to adjudicate the period of disability.

On remand, OWCP returned appellant to the compensation rolls effective January 27, 2014. It referred appellant to Dr. Teed for a second opinion examination to determine his work capacity.

⁸ *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁹ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

¹⁰ *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

¹¹ *Id.*

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's compensation benefits. In his report dated June 30, 2016, Dr. Teed found no sensory loss on examination, 4/5 to 5/5 upper extremity strength, and tenderness with motion and palpation. He diagnosed a resolved right shoulder strain, resolved right shoulder tendinitis/bursitis, a torn right rotator cuff, status post three shoulder surgeries, and chronic left shoulder pain. Dr. Teed further diagnosed bilateral AC joint and glenohumeral joint degeneration unrelated to the work injury. He opined that appellant's work injury was not the type to cause a rotator cuff tear, noting that a March 1998 MRI scan revealed preexisting AC joint degeneration, hypertrophy, impingement, and rotator cuff arthropathy of the right shoulder, and that imaging studies of the left shoulder showed similar findings. Dr. Teed noted that the "major etiology" causing appellant's disability was preexisting arthritis unrelated to the accepted work injury and that the "major contributing factor" resulting in his symptoms was degenerative and preexisting shoulder conditions. While he generally found that appellant's complaints resulted from a preexisting, nonemployment-related condition, he failed to provide a fully-rationalized explanation as to why appellant had no residuals of his accepted left shoulder strain, right shoulder strain, chronic bursitis and tendinitis, rotator cuff tear, and three right shoulder surgeries.

The Board notes that it is not necessary to prove a significant contribution of factors of employment to a condition for the purpose of establishing causal relationship.¹² If work-related exposures caused, aggravated, or accelerated appellant's condition, it is compensable.¹³ Dr. Teed failed to support his determination with sufficient rationale to establish no further disability due to the accepted condition. Rather, he advised that the majority of his disability resulted from nonemployment-related conditions. Consequently, Dr. Teed's opinion is of diminished probative value and therefore OWCP has not met its burden of proof to terminate appellant's compensation.¹⁴

CONCLUSION

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and authorization for medical benefits, effective November 23, 2016.

¹² See *H.C.*, Docket No. 16-0740 (issued June 22, 2016).

¹³ See *Beth P. Chaput*, 37 ECAB 158, 161 (1985); see also *S.S.*, Docket No. 08-2386 (issued June 5, 2008).

¹⁴ See *R.M.*, Docket No. 11-1701 (issued March 19, 2012).

ORDER

IT IS HEREBY ORDERED THAT the November 23, 2016 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 27, 2017
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