United States Department of Labor
Employees' Compensation Appeals Board

S.H., Appellant	)	
and	)	**Docket No. 17-1279**
	)	**Issued: April 18, 2018**
DEPARTMENT OF VETERANS AFFAIRS, CLEMENT J. ZABLOCKI MEDICAL CENTER, Milwaukee, WI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 May 23, 2017 appellant, through counsel, filed a timely appeal from an April 26, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a recurrence of total disability on November 30, 2015 causally related to her June 9, 2011 employment injury; and (2) whether OWCP properly denied appellant's request for authorization of right shoulder surgery.

FACTUAL HISTORY

On June 29, 2011 appellant, then a 42-year-old sales clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained right upper back, neck, and shoulder injuries on June 9, 2011 when a 52-inch television fell on her back while she was retrieving a 32-inch television for a customer. She stopped work on June 23, 2011. OWCP accepted appellant's claim for right shoulder tendinopathy on November 30, 2011. It authorized wage-loss compensation benefits on January 10, 2012 for disability beginning August 10, 2011. Appellant returned to work with restrictions on August 15, 2011 and stopped work on August 29, 2011. On January 10, 2012 OWCP authorized compensation for disability beginning August 10, 2011. Appellant returned to light-duty work on February 10, 2012. On June 20, 2014 she accepted a sales clerk position at the employing establishment. Appellant stopped work on August 10, 2014 and OWCP authorized compensation benefits.

On August 11, 2014 appellant underwent a right shoulder magnetic resonance imaging (MRI) scan which demonstrated partial tears of the supraspinatus and infraspinatus tendons and a possible focal full-thickness tear. A second MRI scan on August 26, 2011 demonstrated mild subscapularis tendinopathy. Appellant was assigned to the position of food service worker on September 29, 2014. She underwent an authorized right shoulder arthroscopy with rotator cuff repair on December 2, 2014.

Appellant filed a notice of recurrence (Form CA-2a) on December 26, 2014 alleging that on April 24, 2014 she developed a recurrence due to the June 9, 2011 work injury. She asserted that she was not provided light-duty work. Rather appellant continued in her date-of-injury job. She returned to modified-duty work on December 29, 2014. Appellant filed a claim for compensation for intermittent disability and part-time leave without pay (LWOP) beginning January 25, 2015, which OWCP authorized. OWCP accepted her claim for a recurrence of disability, effective August 1, 2014, by decision dated February 20, 2015. On February 24, 2015 it notified appellant that her accepted conditions included calcifying tendinitis of the right shoulder, right cervicalgia, and right rotator cuff tear. Appellant continued to perform part-time modified-duty work, with wage-loss compensation paid through May 2015 when she returned to full-time light-duty work.

In a report dated May 13, 2015, appellant's attending physician, Dr. William Pennington, an orthopedic surgeon, noted that appellant continued to report right shoulder pain and stiffness. On examination he found intact rotator cuff strength, no muscle atrophy, and minimal tenderness over the anterior superior shoulder region. Dr. Pennington recommended physical therapy for aggressive posterior capsular stretching and noted that, without improvement, appellant might require either repeated imaging or a posterior capsule release procedure. On June 12, 2015 he again noted appellant's issues with stiffness and pain. Dr. Pennington recommended an additional

MRI scan and determined that appellant should continue light duty. Appellant underwent a right shoulder MRI scan and arthrogram on July 8, 2015 which demonstrated an intact double bundle tendon to osseous rotator cuff repair as well as a small focal partial less than 50 percent bursal sided surface tear measuring seven millimeters involving the junction of the supra and infraspinatus tendons.

On July 24, 2015 Dr. Mary Jo Mccoy, a Board-certified family practitioner, noted that appellant missed work on July 23 and 24, 2015 due to increased right shoulder pain due to her work injury. She related that appellant could return to restricted duty on July 27, 2015.

In a note dated July 28, 2015, Dr. Dean W. Ziegler, an orthopedic surgeon, recommended a manipulation under anesthesia which appellant declined. He read appellant's July 8, 2015 right shoulder MRI scan as demonstrating a small amount of fluid in the sub deltoid bursa with no obvious tearing of the cuff. Dr. Ziegler diagnosed right shoulder postsurgical stiffness with posterior inferior capsule tightness.

Appellant filed a claim for compensation (Form CA-7) LWOP for the period July 23 through 28, 2015. On September 1, 2015 OWCP requested additional evidence to support the claim for 19.25 hours from July 23 through 28, 2015. It noted that appellant had been released to light-duty work, which was available for this period. OWCP afforded appellant 30 days to submit additional medical evidence in support of her claim.

Dr. Zeigler completed a note on August 27, 2015 and reported that appellant had continued difficulty, pain, and irritability in her right shoulder. He noted that appellant had reached a plateau and was experiencing difficulty with using the arm away from her body and overhead. Dr. Ziegler noted loss of range of motion in the right shoulder and weakness and irritability with supraspinatus testing. He opined that appellant would be a candidate for surgery including arthroscopy and capsular release and a possible rotator cuff repair.

Appellant requested to change physicians on September 14, 2015. She submitted a note from Dr. Ziegler dated October 29, 2015 diagnosing rotator cuff repair with postsurgical stiffness and dysfunction. Dr. Ziegler found that appellant's right shoulder was irritable and painful with supraspinatus testing. He provided restrictions of no overhead work and a 10-pound weight limit. On November 24, 2015 OWCP authorized her change of physicians to Dr. Ziegler.

In a note dated December 1, 2015, Dr. Mccoy found appellant experienced an acute exacerbation of her chronic right shoulder pain and was totally disabled. She noted, "As there is no safe light duty that she is able to participate in at work, she should be placed on medical leave until further evaluated by the orthopedist who will be determining what surgical and medical care needs to be given next."

By decision dated December 3, 2015, OWCP denied appellant's claim for compensation for the period July 23 through 24, 2015. Counsel requested an oral hearing from OWCP's Branch of Hearings and Review regarding the December 3, 2015 decision. An oral hearing was held on August 10, 2016. In an October 4, 2016 decision, a hearing representative reversed the December 3, 2015 decision finding that Dr. Mccoy's December 1, 2015 report was sufficient to

establish appellant's total disability on July 23 and 24, 2015. On December 3, 2015 it paid for 3.25 hours of wage-loss compensation on July 28, 2015.

Dr. Mccoy completed an additional note date December 3, 2015, received by OWCP on December 16, 2015. He reported that appellant could not safely lift objects greater than two pounds beginning July 24, 2015, and had pain and decreased range of motion in the right shoulder. She noted that appellant missed work on July 23, 24, and 28, 2015 due to her right shoulder condition, as there was no light-duty work which did not involve lifting or use of the right arm.

On December 3, 2015 Dr. Ziegler found that appellant had weakness in the supraspinatus. He examined appellant on December 8, 2015 and noted her continued symptoms including paresthesias down the hand and pain down the arm. Dr. Ziegler reviewed appellant's MRI scan and found evidence of damage to the supraspinatus tendon rotator cuff consistent with the physical examination. He recommended arthroscopy and then rotator cuff repair as well as capsular release to the posterior capsule. Dr. Ziegler found that appellant was totally disabled from work, pending her repeat right shoulder surgery. He requested authorization for a second right shoulder surgery on December 9, 2015.

On December 18, 2015 appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation for the period November 30 through December 4, 2015.

In a December 22, 2015 letter, OWCP noted that appellant's Form CA-7 indicated a possibility of a recurrence. It requested additional factual and medical evidence in support of appellant's work stoppage and afforded her 30 days for a response.

On December 28, 2015 OWCP referred appellant for a second opinion evaluation with Dr. Mysore S. Shivaram, an orthopedic surgeon.

Appellant responded to OWCP's request for factual information on January 5, 2016 and noted that when she returned to work in December 2014, she worked in the food service department where there was no light-duty work available. She also alleged that she returned to work too soon and that, along with physical therapy, this was a strain. Appellant listed her job duties including handling heavy pans, trays, salad dressing bottles, carts, and cans of food. She also noted that she was required to wipe wide areas which exceeded her pushing restriction.

Dr. Ziegler completed a report on January 5, 2016 and again recommended a second right shoulder surgery. He reported decreased motion and marked decreased function of her right shoulder. Dr. Ziegler opined that there was no light-duty work available at the employing establishment and that appellant could not perform full-duty work. Consequently he found that appellant was totally disabled. On January 13, 2015 Dr. Ziegler completed a work capacity evaluation (OWCP-5c) and found that appellant could not use her right arm.

On January 20, 2016 appellant filed a notice of recurrence (Form CA-2a) and alleged that her recurrence occurred as she was expected to perform duties that were repetitive on a daily basis including lifting and pulling with both arms. The employing establishment advised that appropriate light-duty work was provided.

The employing establishment offered appellant a light-duty position with no use of her right arm on January 3, 2016. Appellant's duties were operating the cash register in the cafeteria, greeting customers, and explaining about the catalog service. The physical requirements were sedentary with walking as needed.

Dr. Ziegler completed a second work restriction evaluation on January 21, 2016 and opined that appellant had significant right shoulder dysfunction that required surgery. He indicated that appellant could not reach, reach above the shoulder, bend, stoop, push, pull, or lift. Dr. Ziegler also restricted appellant's repetitive movements of her wrists and elbows to one hour each.

Dr. Shivaram completed a report on February 9, 2016 and reviewed the statement of accepted facts (SOAF). He noted appellant's history of injury, her medical history and her 2014 surgery. Dr. Shivaram reviewed appellant's July 8, 2015 MRI scan. On examination he found no evidence of swelling, atrophy, or tenderness in the right shoulder. Dr. Shivaram found mild limitation of range of motion, but an overall satisfactory right shoulder examination. He diagnosed right shoulder tendinitis, cervicalgia, and right shoulder rotator cuff tear repaired. Dr. Shivaram opined that appellant's rotator cuff repair was satisfactory based on the follow up MRI scan. He concluded that appellant was capable of returning to regular duty without restrictions on February 1, 2016. Dr. Shivaram noted that appellant had mild right shoulder range of motion limitation which should be treated with a continued home exercise program.

In a note dated February 11, 2016, Dr. Ziegler opined that appellant had a partial thickness tear of the rotator cuff which required surgery. He opined that appellant could work as a greeter, but should not work as a cash register operator and should not be required to wipe tables even with her left hand. On March 17, 2016 Dr. Ziegler found that appellant had difficulty clearing the greater tuberosity under the acromion and pain with her arm away from her body and pain with supraspinatus testing. He recommended surgery.

OWCP referred appellant for an impartial medical examination on March 23, 2016 with Dr. David S. Haskell, a Board-certified orthopedic surgeon, to resolve the conflict of medical opinion regarding appellant's work restrictions and need for further medical treatment.

Dr. Ziegler performed a repeat right shoulder arthroscopy on April 13, 2016. He found a partial-thickness tear involving the deep surface of the supraspinatus tendon in an area about 1.2 centimeters (cm) in width involving 60 percent of the thickness of the tendon as well as some superficial tearing on the posterior aspect of the supraspinatus about 1.2 cm in width and about 0.8 cm in thickness. Dr. Ziegler opined these were chronic tears, traumatic from a work-related injury with overuse.

Dr. Haskell completed a report on April 27, 2016 and reviewed the SOAF. He described appellant's initial employment injury and her accepted conditions of right shoulder tendinitis, cervicalgia, and rotator cuff tear. Dr. Haskell reviewed appellant's diagnostic testing and found that her July 8, 2015 MRI scan demonstrated an intact double bundle tendon to osseous rotator cuff repair. He also noted that appellant underwent an additional rotator cuff repair two weeks prior to his examination. Dr. Haskell did not have Dr. Ziegler's operative report for review. He opined that at the time of her original injury on June 9, 2011 appellant did not sustain an injury to her rotator cuff, but manifested evidence of a preexisting tendinopathy and subsequent partial tear

of the rotator cuff. Dr. Haskell noted that OWCP accepted right rotator cuff tear and that the subsequent treatment and restrictions for this condition were also related to the accepted injury. He found that, following the December 2, 2014 rotator cuff repair, appellant could return to employment as a food service worker approximately six weeks postoperatively with restrictions of no overhead work for an additional six weeks. Dr. Haskell determined that appellant currently had restrictions due to her second right shoulder surgery.

On May 23, 2016 OWCP requested a supplemental report from Dr. Haskell addressing whether the April 13, 2016 right shoulder surgery was necessary. Dr. Haskell responded on May 25, 2016 and reviewed the July 8, 2015 MRI scan. He noted, "with the benefit of an additional MRI scan or arthrogram on February 11, 2016," that Dr. Ziegler found a partial-thickness tear of the rotator cuff. Dr. Haskell reviewed Dr. Ziegler's April 13, 2016 operative report and noted his findings of a partial-thickness tear of the supraspinatus tendon involving 60 percent of the thickness of the tendon. He opined that, based on the July 8, 2015 MRI scan, he would not have recommended any additional surgery, but would proceed with nonoperative manipulation of the shoulder to relieve adhesive capsulitis. Dr. Haskell also noted, "In our experience, which is supported by the literature, partial tears of the rotator cuff measuring less than 50 percent of the cuff generally should be treated nonoperatively."

By decision dated June 16, 2016, OWCP denied appellant's claim for recurrence finding that she had not established a material worsening of her accepted work-related conditions. Counsel requested an oral hearing on June 23, 2016.

By decision dated July 21, 2016, OWCP denied authorization for appellant's right rotator cuff repair surgery. It determined that the weight of the medical opinion evidence rested with Dr. Haskell and he found the additional surgery was not medically necessary. On August 1, 2016 counsel requested an oral hearing.[3]

A hearing was held before an OWCP hearing representative on February 14, 2017 regarding the June 16 and July 21, 2016 decisions of OWCP. Appellant testified that she resigned from her position with the employing establishment on November 8, 2016. She also asserted that, at the time of her initial injury, several televisions fell on her in a domino effect.

By decision dated April 26, 2017, OWCP's hearing representative affirmed OWCP's June 16 and July 21, 2016 decisions, finding that appellant failed to meet her burden of proof to establish a recurrence of disability on November 30, 2015. She further found that OWCP properly denied authorization for right rotator cuff repair surgery.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-

[3] Appellant alleged an additional work-related right shoulder traumatic injury on August 16, 2016.

related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[4]

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establish that she can perform the light-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[5] This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[6] A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.[7] Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.[8]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability on or after November 30, 2015 causally related to her June 9, 2011 employment injury.

In support of her claim for a recurrence of total disability beginning November 30, 2015, appellant failed to sufficiently allege a change in the nature and extent of her light-duty job requirements and the record indicates that the employing establishment provided appropriate light duty. Instead, appellant has attempted to establish a change in the nature and extent of her injury-related condition rendering her totally disabled beginning November 30, 2015. In support of her claim, appellant submitted a note from Dr. Mccoy dated December 1, 2015 which reported that appellant experienced an acute exacerbation of her chronic right shoulder pain on November 30, 2015. She opined that there was no safe light-duty work that appellant could perform and that she required medical leave. This report does not provide the necessary medical rationale sufficient to explain how appellant's injury-related condition had changed such that she could no longer perform her light-duty job requirements. Rather, Dr. Mccoy merely diagnosed

[4] 20 C.F.R. § 10.5(x).

[5] *Terry R. Hedman*, 38 ECAB 222 (1986); *M.S.*, Docket No. 16-1907 (issued August 19, 2017).

[6] *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[7] *T.F.*, 58 ECAB 128 (2006).

[8] *A.D.*, 58 ECAB 149 (2006).

pain. The Board has held that the mere diagnosis of "pain" does not constitute the basis for payment of compensation.[9] Without further diagnosis and medical reasoning this report is insufficient to meet appellant's burden of establishing a recurrence of total disability on or after November 30, 2015.

Dr. Ziegler found that appellant was totally disabled from work beginning December 3, 2015. He again found that appellant demonstrated weakness in the supraspinatus. Dr. Ziegler examined appellant on December 8, 2015 and reported continued right shoulder symptoms including loss of range of motion and paresthesias down the hand.

OWCP referred appellant for a second opinion evaluation with Dr. Shivaram. Dr. Shivaram opined that appellant's rotator cuff repair was satisfactory and concluded that appellant was capable of returning to regular-duty work without restrictions at the time of his February 1, 2016 examination.

The Board finds that OWCP properly found a conflict of medical evidence regarding appellant's ongoing work restrictions and need for further medical treatment between Drs. Shivaram and Ziegler, and referred appellant to Dr. Haskell, to resolve those conflicts. Dr. Haskell completed a report on April 27, 2016 and reviewed the SOAF. He described appellant's initial employment injury and her accepted conditions of right shoulder tendinitis, cervicalgia, and rotator cuff tear. Dr. Haskell reviewed appellant's diagnostic testing and found that her July 8, 2015 MRI scan demonstrated an intact double bundle tendon to osseous rotator cuff repair. He also noted that appellant underwent an additional rotator cuff repair two weeks prior to his examination. On the issue of appellant's disability, Dr. Haskell found that following the December 2, 2014 rotator cuff repair appellant could have returned to employment as a food service worker approximately six weeks postoperatively with restrictions of no overhead work for an additional six weeks. As the report of Dr. Haskell is based on a proper factual and medical history and provides a rationalized basis for his medical conclusion, his report is entitled to the special weight of the evidence.

LEGAL PRECEDENT -- ISSUE 2

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree, or the period of disability, or aid in lessening the amount of monthly compensation.[10] While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[11]

[9] *Robert Broome*, 55 ECAB 339 (2004).

[10] 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999); *P.F.*, Docket No. 16-0693 (issued October 24, 2016).

[11] *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on OWCP's authority being that of reasonableness.[12] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[13] To be entitled to reimbursement of medical expenses, a claimant has the burden of proof to establish that the expenditures were incurred for treatment of the effects of an employment-related injury or condition. Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[14] In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the requested medical treatment is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.[15]

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of FECA which 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 and resolve the conflict of medical evidence.[16] 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.[17]

In situations where there are 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 on a proper factual background, must be given special weight.[18]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for authorization of right shoulder surgery.

OWCP accepted that appellant sustained employment-related calcifying tendinitis of the right shoulder, right cervicalgia, and right rotator cuff tear. It authorized arthroscopic surgery on November 20, 2014 and appellant underwent a right shoulder arthroscopy with rotator cuff repair

[12] *See D.K.*, 59 ECAB 141 (2007).

[13] *Minnie B. Lewis*, 53 ECAB 606 (2002).

[14] *M.B.*, 58 ECAB 588 (2007).

[15] *R.C.*, 58 ECAB 238 (2006).

[16] *Supra* note 2; *B.C.*, 58 ECAB 111 (2006); *M.S.*, 58 ECAB 328 (2007).

[17] *Supra* note 15.

[18] *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

on December 2, 2014. On December 8, 2015 Dr. Ziegler requested authorization for repeat right shoulder arthroscopy. OWCP referred appellant for a second opinion evaluation with Dr. Shivaram, who opined that appellant's rotator cuff repair was satisfactory based on the follow-up MRI scan. The Board finds that OWCP properly determined that a conflict in medical opinion existed between appellant's attending physician, Dr. Ziegler, who recommended a repeat right shoulder arthroscopy and Dr. Shivaram, an OWCP physician, who opined that appellant had a satisfactory result from her initial surgery. OWCP properly referred appellant to Dr. Haskell for an impartial medical opinion.

The Board finds that the weight of the medical evidence rests with the opinion of Dr. Haskell, who examined appellant, reviewed the medical evidence, and found that the repeat right shoulder arthroscopy was not medically warranted. As noted, for a surgical procedure to be authorized, a claimant must show that the surgery is for a condition causally related to a work injury and that it is medically warranted.

In his April 27 and May 25, 2016 reports, Dr. Haskell reviewed the SOAFs, appellant's diagnostic studies and reported findings. He also reviewed Dr. Ziegler's April 13, 2016 operative report and noted those findings of a partial thickness tear of the supraspinatus tendon involving 60 percent of the thickness of the tendon. Dr. Haskell determined that based on the July 8, 2015 MRI scan he would not have recommended any additional surgery, but would have proceed with nonoperative manipulation of the shoulder to relieve adhesive capsulitis. He opined that partial tears of the rotator cuff measuring less than 50 percent of the cuff should be treated without surgery. Dr. Haskell concluded that, based on his examination and findings, the second right shoulder arthroscopy was not warranted as a result of the work injury.

In situations where the case is referred to an impartial medical specialist for the purpose of resolving a medical conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[19] The Board finds that Dr. Haskell provided a well-rationalized opinion based on a complete background, his review of the accepted facts, the medical record, and his examination findings. Dr. Haskell's opinion that the right shoulder arthroscopy was not medically warranted is entitled to special weight and represents the weight of the evidence.

The only limitation on OWCP's authority is approving or disapproving service under FECA is one of reasonableness.[20] In the instant case, appellant requested surgery. OWCP obtained an impartial medical examination through Dr. Haskell who clearly found the surgery not warranted. It, therefore, had sufficient evidence upon which it made its decision to deny surgery and did not abuse its discretion.

[19] 5 U.S.C. § 8123(a); *Guiseppe Aversa*, 55 ECAB 164 (2003); *P.F., supra* note 10.

[20] *Daniel J. Perea*, 42 ECAB 214, 221 (1990); *P.F., supra* note 10.

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 appellant has not met her burden of proof to establish a recurrence of total disability on November 30, 2015 causally related to her June 9, 2011 employment injury. The Board further finds that OWCP properly denied appellant's request for authorization of shoulder surgery.

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2018
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