



appellant established that she had continuing residuals or disability due to her accepted November 29, 2013 employment injury after February 15, 2017.

### **FACTUAL HISTORY**

On November 30, 2013 appellant, then a 54-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 29, 2013 she injured her back, right arm, leg, and knee when she tripped and fell on a sidewalk while delivering mail in the performance of duty. She stopped work on November 30, 2013.

OWCP accepted the claim for closed fracture of the upper end of the right humerus and partial tear of the right rotator cuff. It placed appellant on the supplemental rolls as of January 14, 2014. OWCP placed her on the periodic rolls, effective April 6, 2014. On April 16, 2014 it expanded acceptance of appellant's claim to include partial tear of the bilateral rotator cuffs. Appellant continued to receive medical treatment.

On June 5, 2015 appellant underwent authorized left shoulder arthroscopic surgery by Dr. Thomas Bates, a Board-certified orthopedic surgeon. Appellant underwent authorized right shoulder arthroscopic surgery by Dr. Bates on January 22, 2016.

Appellant continued to undergo physical therapy and receive medical treatment from Dr. Bates. The physical therapy reports as of March 23, 2016 noted that the "assessment of the joint complex above and below the shoulder demonstrates no abnormal findings and all appropriate tests were negative."

On August 23, 2016 appellant underwent a functional capacity evaluation (FCE) by physical therapist, Daniel Friedlander. In his report dated August 25, 2016, he related that "in general her shoulders have rehabbed well with satisfactory strength and range of motion (which will continue to improve) and do not seem to be too limited by her shoulder function. Appellant's main limitation stems from her back pain and decreased standing tolerances. She demonstrated her ability to perform her material handling activities; however, her tolerance of such activities over an entire workday is of concern."

By letter dated September 12, 2016, OWCP advised appellant that it required periodic medical reports for all cases in which compensation was being paid. It requested that she have her physician provide a detailed medical report, which addressed whether she still had residuals

of her work-related injury, whether she was able to return to work, and her recommended course of medical treatment.<sup>3</sup> Appellant was afforded 30 days to submit the necessary evidence.

OWCP received a March 11, 2014 lumbar spine magnetic resonance imaging (MRI) scan report by Dr. Christopher W. Flye, a Board-certified diagnostic radiologist, who diagnosed spondylosis, most pronounced at L2-3. Dr. Flye also noted no high-grade stenosis or fracture.

On October 3, 2016 Dr. Bates responded to OWCP's September 12, 2016 request for an updated medical report. In a letter, he related that appellant was status post bilateral arthroscopic shoulder surgery with rotator cuff repair and a bilateral biceps tenodesis. Dr. Bates noted that appellant was doing well in regards to her shoulders, but continued to complain of neck and back pain. He reported that she underwent an FCE, which indicated restrictions regarding pushing, pulling, and lifting up to 10 to 20 pounds. Dr. Bates advised that appellant could return to work with these restrictions. He concluded that she was at maximum medical improvement (MMI) and that her work-related bilateral shoulder injuries had resolved.

In an October 6, 2016 report, Dr. Bates related appellant's complaints of right shoulder joint pain. He reviewed her history and noted that she was status post left and right shoulder surgeries. Upon physical examination of appellant's bilateral shoulders, Dr. Bates reported no misalignment or tenderness and normal AC prominence. He provided normal range of motion findings. Neer's, Speed's, and O'Brien tests were negative. Dr. Bates concluded that appellant was bilateral shoulder status post arthroscopy and had reached MMI. He also noted that further evaluation was not scheduled.

On January 9, 2017 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits, finding that her November 29, 2013 work-related injury had resolved. It found that the weight of medical evidence rested with the October 3, 2016 medical report of Dr. Bates, appellant's treating physician, who determined that appellant's work-related bilateral shoulder conditions had ceased and that she was no longer totally disabled as a result of her accepted injury. Appellant was afforded 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

In a January 22, 2017 letter, counsel disagreed with OWCP's January 9, 2017 proposed termination letter and alleged that terminating appellant's workers' compensation benefits would be clearly erroneous. He explained that because Dr. Bates authorized appellant to return to work

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<sup>3</sup> On September 27, 2016 OWCP received a letter by counsel, which requested that appellant's claim be expanded to include bilateral shoulder superior labrum anterior and posterior (SLAP) tear, impingement syndrome, acromioclavicular (AC) arthrosis, and left shoulder unstable biceps tendon anchor. He noted that the June 5, 2015 left shoulder and January 22, 2016 right shoulder surgical reports confirmed these diagnoses. Counsel also requested that OWCP expand appellant's claim to include aggravation of lumbar spondylosis with disc bulge at L2-3. In a letter dated October 25, 2016, OWCP advised appellant that the evidence of record was insufficient to establish additional bilateral shoulder conditions and aggravation of lumbar spondylosis with disc bulge at L2-3. It requested additional medical evidence to establish that appellant sustained additional conditions as a result of the accepted November 29, 2013 employment incident. Appellant was afforded 30 days to submit the requested information. Because the Board's jurisdiction is limited to reviewing final adverse decisions of OWCP and OWCP has not issued a final decision on this issue, it is not before the Board on this appeal. *See* 20 C.F.R. §§ 501.2(c) and 501.3.

with restrictions, the correct course of action would be to see if the employing establishment could accommodate her work restrictions. Counsel noted that Dr. Bates provided restrictions of pushing, pulling, and weightlifting no more than 10 to 20 pounds. He reported that rural carriers were required to be able to lift up to 70 pounds, handle hampers of mail weighing several hundred pounds, and handle trays of mail weighing 20 to 25 pounds. Counsel cited to several cases, which had overturned termination decisions because the employee had work restrictions which conflicted with the duties of the date-of-injury position. He also requested that OWCP develop the medical evidence to determine whether it should expand appellant's claim to include a back injury.

By decision dated February 14, 2017, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective February 15, 2017. It found that the weight of medical evidence rested with Dr. Bates, appellant's treating physician, who had determined, in an October 3, 2016 report, that she no longer had residuals of the work-related bilateral shoulder conditions.

On March 2, 2017 appellant, through counsel, requested reconsideration. In an attached statement, he contended that OWCP had the burden of identifying which work restrictions, as reported by Dr. Bates, were related to her shoulder injury and which ones were related to her back. Counsel asserted that until OWCP met this burden of proof, it was erroneous to terminate her compensation benefits. He reported that he was submitting additional medical evidence from Dr. David C. Miller, a Board-certified family practitioner, who had identified a number of objective signs of lumbar dysfunction which corresponded with his diagnoses of spinal stenosis in the lumbar region, lumbar radiculopathy, and lumbar spondylosis. Counsel requested that OWCP reconsider the termination of appellant's wage-loss compensation and medical benefits and expand acceptance of the claim to include aggravation and/or acceleration of spinal stenosis in the lumbar region, lumbar radiculopathy, and lumbar spondylosis.

OWCP received a letter dated February 15, 2017 addressed to Dr. Miller, on which counsel posited specific questions regarding appellant's condition. Dr. Miller checked a box marked "yes," indicating that he diagnosed spinal stenosis in the lumbar region, lumbar radiculopathy, and lumbar spondylosis based on a review of a lumbar MRI scan and physical examination. He also checked a box marked "yes" indicating that he believed the diagnosed back condition resulted, either directly or by way of aggravation and/or acceleration from a preexisting condition, of the fall that appellant suffered in 2013.

Appellant also submitted a February 20, 2017 letter addressed to Dr. Bates in which counsel posited specific questions regarding appellant's condition. He checked a box marked "no" indicating that the work restrictions provided in his October 3, 2016 letter were not attributable only to her back problems. Dr. Bates also checked a box marked "yes" indicating that the work restrictions provided in his October 3, 2016 letter were required, in whole or in significant part, by her accepted shoulder injury. He further checked a box marked "no," that appellant could not return to full duty as a rural carrier.

By decision dated May 31, 2017, OWCP denied modification of its February 14, 2017 termination decision. It found that the new medical evidence submitted on reconsideration was insufficient to overcome the weight of medical evidence accorded to Dr. Bates, appellant's

treating physician, who opined in his October 3, 2016 report that appellant no longer had residuals of her work-related bilateral shoulder injury and was capable of returning to work with restrictions.

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

Under FECA,<sup>4</sup> once OWCP has accepted a claim and paid compensation, it has the burden of proof to justify termination or modification of compensation benefits.<sup>5</sup> OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>6</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>8</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>9</sup>

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

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective February 15, 2017 because the medical evidence of record established that she no longer suffered from residuals of the accepted work-related conditions.

OWCP terminated appellant's wage-loss compensation and medical benefits based on the reports of Dr. Bates, appellant's treating physician. In his October 3, 2016 report, Dr. Bates related that appellant was status post-bilateral arthroscopic shoulder surgery with rotator cuff repair and a bilateral biceps tenodesis. He concluded that appellant was at MMI and that her work-related bilateral shoulder injuries had resolved.

In his October 6, 2016 report, Dr. Bates noted appellant's complaints of shoulder joint pain, but he provided extensive physical examination findings relative to appellant's shoulders, which were all within normal limits. He again concluded that appellant had reached MMI and indicated that further medical treatment was not scheduled. In assessing medical evidence, the number of physicians supporting one position or another is not controlling. Rather the weight of

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>6</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>7</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>8</sup> *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

<sup>9</sup> *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *A.P.*, *id.*

such evidence is determined by its reliability, its probative value, and its convincing quality.<sup>10</sup> The factors that comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of 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>11</sup> As appellant's treating physician, Dr. Bates had extensive knowledge of appellant's medical history. His report displayed thoroughness of examination. He explained that based upon appellant's successful bilateral shoulder surgeries, she had reached MMI. The Board therefore finds that his opinion establishes that appellant's accepted bilateral shoulder conditions had resolved.

Counsel disagreed with the proposed termination of compensation and contended that Dr. Bates had only authorized appellant to return to work with restrictions. In his October 3, 2016 report, he noted that appellant had undergone a functional capacity evaluation to determine her ability to return to work, which had recommended that appellant could return to work with restrictions of pushing, pulling, and lifting up to 10 to 20 pounds. However, the Board finds that the record does not substantiate that these restrictions were due to appellant's accepted bilateral shoulder conditions. As previously noted, Dr. Bates related objective findings from physical examination of appellant's bilateral shoulders which were within normal limits. He consistently reported that appellant no longer had residuals of the accepted conditions, based upon her physical examination, and that she had reached MMI. It is clear that appellant's work restrictions were based upon her lumbar conditions, which were not accepted as causally related to this accepted injury. For conditions not accepted by OWCP as being employment related, it is the employee's burden of proof to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such a relationship.<sup>12</sup>

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective February 15, 2017.

### **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.<sup>13</sup>

To establish 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 causal relationship.<sup>14</sup>

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<sup>10</sup> See *Nicolette R. Kelstrom*, 54 ECAB 570 (2003).

<sup>11</sup> See *M.D.*, 59 ECAB 211 (2007).

<sup>12</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>13</sup> See *Manuel Gill*, 52 ECAB 282 (2001).

<sup>14</sup> *R.D.*, Docket No. 16-0982 (issued December 20, 2016).

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>15</sup>

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

The Board further finds that appellant has not established continuing residuals or disability causally related to her November 29, 2013 employment injury.

Following the termination of her compensation benefits by OWCP, appellant submitted a report from Dr. Miller. In this report, however, Dr. Miller did not address appellant's bilateral shoulder conditions, but rather provided examination findings and conclusions regarding lumbar conditions. None of these conditions have been accepted as work related.<sup>16</sup> As previously noted, appellant has requested that acceptance of her claim be expanded to include lumbar spine diagnoses, however, OWCP has not issued a final decision regarding this request. Because Dr. Miller failed to relate appellant's inability to work to her accepted conditions, his opinion fails to demonstrate that appellant remained disabled from work after February 15, 2017.

Appellant also submitted an additional letter dated February 20, 2017, in which her counsel asked Dr. Bates to check "yes" or "no" to questions regarding appellant's work restrictions. Dr. Bates checked "no" indicating that appellant's work restrictions were not attributed only to her back conditions, and he checked "yes" indicating that her work restrictions were required in whole or significant part, by her shoulder injury. The Board has long held however that when a physician's opinion on causal relationship consists only of checking a box marked "yes" to a form question, that opinion has little probative value without medical rationale, and is insufficient to establish a causal relationship.<sup>17</sup> Dr. Bates had not previously related that appellant required work restrictions causally related to her accepted shoulder conditions, and he provided no additional rationalized explanation in support of his supplemental opinion. His report therefore lacks sufficient probative value to establish appellant's claim.<sup>18</sup>

There is no medical evidence which supports that she has any continuing residuals or disability causally related to her accepted bilateral shoulder conditions. Accordingly, the Board finds that appellant has not met her burden of proof.

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.

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<sup>15</sup> *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>16</sup> *See G.G.*, Docket No. 15-0985 (issued August 21, 2015).

<sup>17</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>18</sup> *See B.J.*, Docket No. 16-1660 (issued January 27, 2017).

**CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 15, 2017. The Board further finds that appellant has not met her burden of proof to establish continuing disability due to her accepted November 29, 2013 employment injury after February 15, 2017.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 31, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 20, 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