United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 17-0084**
	)	**Issued: January 23, 2018**
U.S. POSTAL SERVICE, NORTH HOUSTON PROCESSING & DISTRIBUTION CENTER, Houston, TX, Employer	)	

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 11, 2016 appellant filed a timely appeal from an April 12, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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 this case.

[1] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. One hundred eighty days from April 12, 2016, the date of OWCP's decision, was October 9, 2016. As this fell on a Sunday and because Monday, October 10, 2016 was a Federal holiday, appellant had until Tuesday, October 11, 2016 to file the appeal. Since using October 17, 2016, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is Tuesday, October 11, 2016, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation, effective July 1, 2012; and (2) whether appellant met her burden of proof to establish continuing employment-related disability after July 1, 2012.

FACTUAL HISTORY

On December 20, 2002 appellant, then a 43-year-old parcel post distributor (machine), filed a traumatic injury claim (Form CA-1) alleging that, on December 19, 2002, she injured her left arm while sorting Priority Mail. She stopped work that day and returned on December 25, 2002. On January 28, 2003 OWCP accepted the claim for tendinitis of the left forearm. Additional accepted conditions include sprain of left shoulder, pain in left shoulder joint region, calcifying tendinitis of the left shoulder, and left bicipital tenosynovitis.

In April 2004 appellant began seeing Dr. Benny J. Sanchez, a pain management specialist. On July 10, 2006 Dr. Lubor J. Jarolimek, a Board-certified orthopedic surgeon, performed repair of a left shoulder full-thickness rotator cuff tear. At that time OWCP placed appellant on the periodic compensation rolls. She returned to part-time, modified duty on January 22, 2007 and to full-time, modified duty on June 13, 2007. By decision dated August 30, 2007, OWCP found that appellant's modified distribution clerk position fairly and reasonably represented her wage-earning capacity with zero percent loss of earning capacity.

On July 9, 2008 Dr. Jarolimek advised that appellant was at maximum medical improvement (MMI) and could perform modified duty with left arm restrictions.

On June 7, 2010 appellant filed a notice of recurrence (Form CA-2a) claim. She indicated that she stopped work on May 28, 2010 because the employing establishment withdrew her limited-duty assignment under the National Reassessment Process (NRP). The employing establishment indicated that no work was available within appellant's restrictions.[3] OWCP accepted the May 28, 2010 recurrence claim on July 28, 2010. In a July 29, 2010 decision, OWCP modified the August 30, 2007 loss of wage-earning capacity determination, finding that evidence of record substantiated that a new job offer from March 5, 2009 was for "make work" and that appellant was entitled to wage-loss compensation under NRP. OWCP paid appellant compensation beginning May 28, 2010 and placed her on the periodic rolls in October 2010.

In December 2010 OWCP referred appellant to Dr. Robert Fulford, a Board-certified orthopedic surgeon, for a second opinion evaluation. Following examination on January 20, 2011, where he noted symptom magnification, Dr. Fulford advised that appellant could work an eight-hour day with an indefinite restriction of no reaching over the left shoulder. In supplemental reports dated April 11 and May 30, 2011, he advised that appellant had no weight restrictions for lifting, pushing, or pulling, and that she could return to full duty for eight hours daily. Dr. Fulford again noted symptom magnification and recommended a functional capacity evaluation.

[3] Evidence regarding NRP and appellant's rights was attached.

A February 7, 2011 left shoulder magnetic resonance imaging (MRI) scan was performed. It demonstrated supraspinatus tendinosis, but no rotator cuff tear, bone injury, or joint effusion.

On February 10, 2011 OWCP requested that Dr. Sanchez review Dr. Fulford's report. Dr. Sanchez, on February 14, 2011, agreed with Dr. Fulford's assessment of appellant's ability to work. On April 5, 2011 Dr. Sanchez explained that appellant's shoulder condition should not prevent her from working full time. He noted no significant range of motion loss and diagnosed left shoulder rotator cuff tear, impingement, acromioclavicular (ACL) joint arthroscopy, and chronic pain, all resolved after surgery. In January 31, March 25, and May 24, 2011 duty status reports (Form CA-17), Dr. Sanchez indicated that, due to muscle spasms and a rotator cuff repair of the left shoulder, appellant had left arm restrictions. These included no lifting, carrying, twisting, pushing, pulling, simple grasping, reaching above the shoulder, or operating machinery.

OWCP determined that a conflict in medical evidence was created between Dr. Sanchez and Dr. Fulford regarding appellant's work capabilities and referred her to Dr. Frank L. Barnes, a Board-certified orthopedic surgeon, for an impartial evaluation.

In a July 7, 2011 report, Dr. Barnes noted the history of injury, and his review of the evidence including the statement of accepted facts (SOAF). He indicated that appellant was right-handed and described her complaint of left shoulder pain. Left shoulder range of motion was diminished and tender to extremely light touch on examination. Biceps-triceps junction and forearm measurements were equal bilaterally, and there was no crepitation, sulcus sign, and no anterior posterior laxity. Strength was 4/5, and upper extremity sensory testing and radial pulses were normal. Dr. Barnes diagnosed left shoulder rotator cuff tear and impingement, postsurgery. He advised that appellant had reached MMI on July 9, 2008 and could return to the mail processor position with a permanent restriction that she was unable to reach more than one foot overhead.

On July 21, 2011 OWCP proposed to terminate appellant's wage-loss compensation. It found that the report of Dr. Barnes, the referee physician, demonstrated that appellant could perform the duties of a mail processing clerk that she was performing when she was injured.

Appellant submitted reports from Dr. Sanchez who restated her left arm restrictions. He noted that restricted left shoulder range of motion had been reported on June 21 and July 27, 2011.

By decision dated August 22, 2011, OWCP terminated appellant's wage-loss compensation, effective August 28, 2011. It found that the special weight of the medical evidence rested with the opinion of Dr. Barnes.

On August 24, 2011 OWCP received a work capacity evaluation (Form 5c) dated July 7, 2011 from Dr. Barnes. Dr. Barnes reiterated that appellant could perform her regular job duties with her only restriction of no reaching more than one foot over her head with her left arm.

On September 20, 2011 appellant requested a hearing with OWCP's Branch of Hearings and Review. Dr. Sanchez continued to submit reports reiterating appellant's left upper extremity

restrictions. On October 26, 2011 he performed trigger point injection to the left trapezius and cervical musculature at C6-7.

By decision dated January 10, 2012, an OWCP hearing representative set aside the August 22, 2011 termination decision, finding that the SOAF provided to Dr. Barnes was insufficient as it did not include the physical requirements of the date-of-injury job. On remand OWCP was instructed to obtain information from the employing establishment regarding appellant's specific job duties on the date of injury, prepare an updated SOAF, and forward it to Dr. Barnes for a supplemental opinion regarding whether appellant was physically capable of performing the duties of the position. The hearing representative concluded that, as OWCP had not met its burden of proof to terminate appellant's wage-loss compensation, it should be reinstated retroactively.

Appellant continued treatment with Dr. Sanchez.

In a January 17, 2012 report, Dr. Ronnie D. Shade, a Board-certified orthopedic surgeon,[4] described the December 19, 2002 work injury and appellant's complaints of pain, muscle cramps, weakness, and spasms in both shoulders. He noted that appellant underwent a left shoulder MRI scan on January 16, 2012[5] and described bilateral shoulder findings. Dr. Shade diagnosed bilateral biceps tendinitis, bilateral rotator cuff tears, bilateral shoulder impingement syndrome, bilateral superior labral tear from anterior to posterior (SLAP), and bilateral ACL joint osteoarthritis, surgically treated on the left. He recommended physical therapy by a chiropractor and medication. On February 10, 2012 Dr. Shade described the January 16, 2012 MRI scan findings, noting that the left shoulder had moderate rotator cuff tendinosis with multiple low grade articular surface partial thickness tears throughout the distal supraspinatus tendon, a SLAP tear, and postsurgical changes with mild-to-moderate ACL joint osteoarthrosis. The right shoulder demonstrated degeneration of the superior glenoid labrum, moderate-to-severe rotator cuff tendinosis with multiple articular surface partial thickness tears throughout the supraspinatus and infraspinatus tendons, a high-grade partial thickness tear of the distal infraspinatus tendon, moderate ACL joint osteoarthritis, impingement, and findings consistent with mild subacromial-subdeltoid bursitis. Dr. Shade reiterated his diagnoses and additionally recommended aquatic therapy and referral to a psychiatrist. He advised that appellant was off work due to decreased muscle strength and range of motion in the left shoulder, and that she required both mental and physical medical care to reduce physical and emotional symptoms which were the result of the December 19, 2002 employment injury that had left her temporarily totally disabled.

On February 14, 2012 Dr. Shayna P. Lee, a psychiatrist, diagnosed major depressive disorder, single episode, severe without psychotic features, and chronic pain due to

[4] The record also contains reports from Dr. Shade regarding appellant's low back condition. The record indicates that appellant has another claim involving the lumbar spine, adjudicated under OWCP File No. xxxxxx250. This other claim is not before the Board on the present appeal.

[5] A copy of the MRI scan report is not found in the case record. Dr. Shade's January 17, 2012 report includes two descriptions of a left shoulder MRI scan.

psychological factors and medical condition. She recommended monthly treatment and medication. Dr. Lee continued to submit status reports.

On February 2012 appellant filed Form CA-7 claims for compensation for the periods August 29 to September 22, 2011 and December 2, 2011 to February 17, 2012. OWCP paid appellant wage-loss compensation for these dates, and returned her to the periodic compensation rolls, effective February 12, 2012.

On March 2, 2012 Dr. Shade requested that OWCP accept SLAP tears of the right shoulder and bilateral rotator cuff tears, bilateral shoulder impingement syndrome, and bilateral osteoarthritis of the ACL joints of both shoulders. On May 6, 2012 he advised that appellant was off work due to decreased muscle strength and range of motion of the left shoulder. Dr. Shade further noted that he suspected that appellant had an emotional condition directly related to the December 19, 2002 employment injury which impeded her recovery.

After OWCP requests, the employing establishment forwarded a job description with physical requirements for parcel post distribution machine operator. On April 25, 2012 OWCP forwarded an updated SOAF that included the job description with physical requirements to Dr. Barnes.[6] Dr. Barnes was asked to discuss whether appellant was physically capable of performing the position considering her left upper extremity employment injury. Appellant and her representative were copied on the correspondence.

In an undated response, Dr. Barnes noted reviewing his July 7, 2011 report and OWCP's April 25, 2012 letter. He advised that appellant's only impairment was to her left shoulder with no limitation on the right. Dr. Barnes noted that his examination showed a global left arm weakness which did not follow any anatomic pattern with tenderness and sensitivity to light touch when barely touching the skin, which was an indicator of symptom magnification although not conclusive. He reported that there was no left upper extremity atrophy in relation to her right upper extremity, and that appellant's limitation of left shoulder motion appeared to be consistent, even though the apparent weakness was not. Dr. Barnes opined that appellant had adequate strength to push, pull, or lift 35 pounds, using both arms together, and since the job did not require climbing ropes or ladders, which would be precluded by her shoulder limitation of motion, he concluded that appellant could perform her regular job duties as described. On an attached work capacity evaluation (OWCP-5c) dated April 28, 2012, he indicated that appellant could perform her usual job for eight hours daily, could sit, walk, stand, twist, and operate a motor vehicle, repetitively move wrists and elbows, squat and kneel for eight hours a day, could push and pull 40 pounds, with the only limitation, no ladders or ropes.

On May 21, 2012 OWCP proposed to terminate appellant's wage-loss compensation. It found that Dr. Barnes' July 7, 2011 and April 25, 2012 reports demonstrated that appellant could

[6] The physical requirements of the position included: intermittent lifting up to 15 pounds two hours per day; sitting and simple grasping six hours per day; standing two hours per day; fine manipulation (including keyboarding), reaching above the shoulder, exposure to fumes/dust and noise four hours per day; walking, bending, stooping, twisting, pushing/pulling one hour per day; and no climbing, kneeling, driving a vehicle or operating machinery.

perform the duties of mail processing clerk the duties of which she had been performing when injured.

In a June 4, 2012 response, appellant's then representative disagreed with the proposed termination. Additional medical evidence submitted included a May 4, 2012 treatment note in which Dr. Shade discussed appellant's bilateral shoulder condition. Dr. Shade reiterated that appellant was off work due to decreased muscle strength and range of motion of the left shoulder, and that she had a consequential emotional condition. He further maintained that appellant's right shoulder findings were a consequence of the December 19, 2002 employment injury due to right arm overcompensation.

Dr. Lee submitted May 15 and June 12, 2012 psychiatry progress notes. Other reports included treatment notes from a chiropractor, physical therapy, and aquatic therapy reports, as well as evidence previously of record.

By decision dated June 29, 2012, OWCP terminated appellant's wage-loss compensation, effective July 1, 2012. It found that the special weight of the medical evidence rested with the opinion of Dr. Barnes.

Appellant timely requested a review of the written record by an OWCP hearing representative. Subsequent medical evidence received by OWCP included August 10 and October 19, 2012 treatment notes from Dr. Shade. Dr. Shade's examination findings in each report were exactly the same. He reiterated his diagnoses and opinion that appellant was off work due to decreased muscle strength and decreased range of motion of the left shoulder.

Dr. Lee provided psychiatric progress notes dated July 17, August 28, and September 18, 2012. She reiterated her diagnoses of major depressive disorder and chronic pain due to psychological factors and appellant's medical condition. Denise Turboff, M.Ed., a licensed professional counselor, provided a mental health evaluation dated September 6, 2012. She described test results. Dr. Turboff's diagnoses included pain disorder associated with both psychological factors and general medical condition, and depressive disorder, moderate, noting that a December 6, 2011 employment injury caused significant pain. Appellant also submitted evidence previously of record, and physical therapy and chiropractic reports.

By decision dated November 28, 2012, an OWCP hearing representative found that no conflict in medical evidence had been created as both appellant's treating physician and the OWCP referral physician affirmed the June 29, 2012 decision, finding that appellant's work-related condition had resolved such that she could perform full duty employment. He explained that, even though Dr. Barnes could not be considered a referee physician, his opinion could be considered, and that it supported that appellant could perform her full-duty job.

On March 18, 2013 appellant's then representative requested reconsideration. Additional medical evidence submitted included December 7, 2012 and February 15, 2013 reports from Dr. Shade in which he repeated his findings and conclusions. Dr. Lee furnished a December 4, 2012 note reiterating appellant's diagnoses.

In an April 12, 2013 merit decision, OWCP denied modification of its prior decision. It noted that the medical evidence submitted was insufficient to establish that appellant continued to be disabled from work after July 1, 2012 due to the December 19, 2002 employment injury.

Appellant's then representative requested reconsideration on September 11, 2013. In April 12 and May 9, 2013 reports Dr. Shade reiterated his findings and conclusions. A June 14, 2013 left shoulder x-ray revealed intact bony structures, with no bony injury, tumorous lesion, soft tissue calcifications, loose body, or ACL joint separation. Dr. Shade performed left shoulder steroid injection on June 14, 2013. On August 9 and September 27, 2013 he reiterated his findings and conclusions.

On February 5, 2013 Dr. Robert Wilkerson, a psychiatrist, noted that appellant had a left shoulder injury on December 19, 2002, described her past medical history, and complaints of left upper extremity pain and stiffness. He diagnosed major depressive disorder, single episode, severe without psychotic features, and pain disorder associated with both psychological factors and a general medical condition. Dr. Wilkerson completed psychiatric progress notes on March 19, April 10, and May 28, 2013.

By decision dated November 13, 2013, OWCP conducted a merit review and found that the evidence submitted was insufficient to warrant modification of its April 12, 2013 decision. It also issued a merit decision on February 6, 2014 also denying modification of the April 12, 2013 decision.

On November 5, 2014 appellant again requested reconsideration.

In a November 7, 2013 report, Dr. Jarolimek noted appellant's complaints of continued left shoulder pain. He discussed her treatment with Dr. Shade. Dr. Jarolimek's left shoulder examination demonstrated 120 degrees of abduction and 140 degrees of forward elevations with positive impingement signs and muscle spasm. He noted January 16, 2012 left shoulder MRI scan findings and diagnosed chronic left shoulder pain and an 80 percent thickness rotator cuff tear per MRI scan diagnosis.[7] Dr. Jarolimek advised that appellant could perform activities within her tolerance. He again saw appellant on January 23, 2014 and additionally diagnosed early adhesive capsulitis of the left shoulder.[8]

On July 10, 2014 appellant began treatment with Dr. Orlando Peccora, a psychiatrist who practices pain management. Dr. Peccora noted the history of injury and appellant's complaint of chronic left arm and neck pain. He reviewed appellant's history and performed a mental status assessment. Dr. Peccora diagnosed mood disorder due to general medical condition, anxiety/panic disorder without agoraphobia, and left shoulder lesion, tenosynovitis, and calcific tendinitis. He advised that, due to the severity of chronic pain, appellant had been temporarily totally disabled secondary to the December 19, 2002 employment injury and had developed a severe psychological condition that prevented her from returning to work. Dr. Peccora

[7] *Supra* note 5.

[8] Dr. Shade provided a November 8, 2013 treatment note reiterating his findings and conclusions. On February 20, 2014 he informed appellant that he was ending the physician-patient relationship with appellant.

recommended an intensive outpatient pain management program. He submitted form outpatient progress notes dated August 7, September 5, and 25, 2014 describing appellant's therapy.

In a July 15, 2014 report, Dr. Alfredo Salinas, an orthopedic surgeon, noted appellant's complaints of left shoulder pain. Left shoulder examination demonstrated tenderness on abduction beyond 90 degrees. Dr. Salinas recommended an updated MRI scan. A left shoulder MRI scan performed on July 25, 2014 demonstrated slight tendinosis at the supraspinatus tendon insertion without full-thickness tear, but no other significant abnormality. In treatment notes dated July 31 to December 9, 2014, Dr. Salinas described appellant's continued complaint of left shoulder pain and indicated that appellant had begun physical therapy. Appellant also submitted reports of counselling sessions, physical therapy, stress management, and massage therapy sessions.

By decision dated January 29, 2015, OWCP denied modification of its February 6, 2014 decision. It found that the evidence submitted was insufficient to support that appellant was totally disabled from work due to the accepted employment injury.

Appellant's then representative requested reconsideration on January 20, 2016. He asserted that the medical evidence of record indicated that appellant required additional left shoulder surgery and that she had developed consequential right shoulder and emotional conditions as a result of the December 19, 2002 employment injury.

In a January 29, 2015 treatment note, Dr. Salinas noted appellant's continued complaints of tenderness in the left shoulder and that she was continuing physical therapy.

Dr. Jeffrey D. Reuben, an orthopedic surgeon, began treating appellant on April 22, 2015. He noted the December 19, 2002 work injury and appellant's complaints of pain and stiffness in the left shoulder, right knee, and the lower back. Dr. Reuben described her past medical and surgical history. He noted restricted left shoulder range of motion with tenderness in the biceps tendon. Dr. Reuben interpreted a left shoulder MRI scan, noting that it showed rotator cuff tendinosis and ACL joint hypertrophy. He diagnosed left shoulder impingement syndrome caused by the December 19, 2002 work injury. Dr. Reuben completed an attending physician's report (Form CA-20) on April 23, 2015. He reiterated his diagnosis, noting it was caused by the employment injury and advised that appellant was temporarily totally disabled. On treatment notes dated June 17 and October 16, 2015 and January 13, 2016 Dr. Reuben reiterated his findings and conclusions noting that appellant was totally disabled and had an emotional condition. He also completed attending physician reports on July 15 and October 20, 2015, and January 13, 2016 in which he reiterated his diagnosis and conclusion that appellant was totally disabled from work.

On May 20, 2015 Dr. Peccora reevaluated appellant. He reiterated his diagnoses and advised that, due to the severity of her chronic pain, she was totally disabled secondary to the December 19, 2002 work injury and had developed a severe consequential psychological condition that prevented her return to work. Dr. Peccora recommended a multidisciplinary intensive outpatient pain management program. In an August 31, 2015 assessment, he noted that appellant completed her pain management program with moderate success in the physical exercises portion. Appellant also had therapeutic massage that achieved notable pain relief, and

she had made significant advances in her consequential psychological condition. Dr. Peccora opined that appellant had left shoulder impingement syndrome as a direct result of the December 19, 2002 employment injury. He concluded that she remained totally disabled due to the December 19, 2002 employment injury and recommended continued pain management. Dr. Peccora also furnished form outpatient progress notes dated July 15, 2015 to March 4, 2016 in which he described appellant's treatment.

On September 22, 2015 Dr. Anthony Moore, a Board-certified psychiatrist, noted that appellant injured her left shoulder at work on December 19, 2002. Appellant had continued bilateral shoulder, knee, and back pain, which made it impossible for her to walk and perform activities of daily living, and also had continued feelings of depression and worthlessness. Dr. Moore completed mental status examination and diagnosed major depressive episode and chronic pain syndrome, directly caused by the December 19, 2002 injury. He advised that appellant was totally disabled from work due to these conditions which should be accepted so that she could receive treatment. Dr. Moore recommended individual psychotherapy and pain management. Appellant also submitted copious reports of counselling sessions, physical therapy, stress management, and massage therapy sessions.

By decision dated April 12, 2016, OWCP denied modification of the January 29, 2015 decision, finding that the evidence of record was insufficient to establish that appellant continued to be totally disabled from work due to the accepted conditions. It noted that there had been no previous decision on whether consequential conditions were employment related and that Dr. Moore's report would be forwarded to be processed as a request for a consequential upgrade.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify 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.[9] 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.[10]

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.[11] The implementing regulation states 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.[12]

[9] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[10] *Id.*

[11] 5 U.S.C. § 8123(a); *see Y.A.*, 59 ECAB 701 (2008).

[12] 20 C.F.R. § 10.321.

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation on July 1, 2012. The accepted conditions are tendinitis of the left forearm, sprain of left shoulder, pain in left shoulder joint region, calcifying tendinitis of the left shoulder, and left bicipital tenosynovitis. OWCP determined that a conflict in medical evidence had been created between the opinions of Dr. Sanchez, an attending pain management specialist, and Dr. Fulford, an OWCP referral Board-certified orthopedist, regarding appellant's work capabilities and referred her to Dr. Barnes, also Board-certified in orthopedic surgery, for an impartial medical evaluation.

The Board notes that in a November 28, 2012 decision, an OWCP hearing representative found that, as both Dr. Sanchez and Dr. Fulford found that appellant's work-related conditions had resolved so that she could perform full duty, no conflict had been created. The record, however, indicates that even though Dr. Sanchez noted his agreement with Dr. Fulford's findings on February 14, 2011, and on April 5, 2011 reiterated this conclusion, Dr. Sanchez also signed a duty status report on May 24, 2011 in which he indicated that, due to muscle spasms and a rotator cuff repair of the left shoulder, appellant had left arm restrictions of no lifting or carrying, twisting, pushing, pulling, simple grasping, reaching above the shoulder, or operating machinery. Dr. Sanchez repeated these restrictions on June 21, July 26, and September 28, 2011. A conflict in medical opinion was therefore created with regard to appellant's work capabilities.

In his July 7, 2011 report, Dr. Barnes noted the history of injury and his review of the evidence including the SOAF. In noting findings, he advised that appellant was extremely tender to light touch. Strength was 4/5, and upper extremity sensory testing and radial pulses were normal. Dr. Barnes diagnosed left shoulder rotator cuff tear and impingement, postsurgery. He advised that appellant had reached MMI on July 9, 2008 and could return to the mail processor position with a restriction on reaching more than one foot overhead. On a July 7, 2011 work capacity evaluation form Dr. Barnes reiterated that appellant could return to work with the one restriction. In a second report received on May 14, 2012, following his review of the date-of-injury job requirements, Dr. Barnes advised that appellant's only impairment was to her left shoulder with no limitation on the right. His examination revealed global weakness of the left arm that did not follow any anatomic pattern with tenderness and sensitivity to light touch when barely touching the skin. Dr. Barnes opined that this was an indicator of symptom magnification although not conclusive. He opined that appellant had adequate strength to push, pull, or lift 35 pounds using both arms together, and concluded that appellant could perform her regular job duties as described. On an attached work capacity evaluation form dated April 28, 2012, Dr. Barnes indicated that appellant could perform her usual job for eight hours daily, could sit, walk, stand, twist, and operate a motor vehicle, repetitively move wrists and elbows, squat and kneel for eight hours a day, could push and pull 40 pounds, with the only limitation, no climbing ladders or ropes.

The Board finds that Dr. Barnes provided a comprehensive, well-rationalized opinion in which he clearly advised that appellant could return to her preinjury position as a transportation

security screener. Dr. Barnes' opinion is therefore entitled to the special weight accorded an impartial medical examiner and constitutes the weight of the medical evidence.[13]

The most contemporaneous medical evidence submitted by appellant before the July 1, 2012 termination included additional reports from Dr. Sanchez who continued to treat appellant and reiterated appellant's left arm restrictions. The Board has long held that reports from a physician who was on one side of a medical conflict that an impartial medical examiner resolved, are generally insufficient to overcome the special weight accorded to the report of the impartial medical examiner, or to create a new conflict.[14] Dr. Sanchez had been on one side of the conflict resolved by Dr. Barnes.

Dr. Shade submitted a number of reports in which he advised that a January 16, 2012 left shoulder MRI scan showed moderate rotator cuff tendinosis with multiple low grade articular surface partial thickness tears throughout the distal supraspinatus tendon, a SLAP tear, and postsurgical changes of prior acromioplasty with mild-to-moderate ACL joint osteoarthrosis. A copy of the MRI scan report itself is not found in the case record, and the Board notes that a February 7, 2011 left shoulder MRI scan demonstrated supraspinatus tendinosis, and no rotator cuff tear, bone injury, or joint effusion, and a left shoulder MRI scan on July 25, 2014 revealed slight tendinosis at the supraspinatus tendon insertion without full-thickness tear, and no other significant abnormality. Dr. Shade also diagnosed conditions not accepted including right shoulder and emotional conditions, and opined that decreased muscle strength and left shoulder range of motion rendered appellant totally disabled. At no point did Dr. Shade discuss the specific job duties of a transportation security screener.

As to the opinions of Dr. Lee, a psychiatrist, while she diagnosed a depressive disorder and chronic pain associated with both psychological factors and a general medical condition, she did not sufficiently explain why and how the December 19, 2002 employment injury led to these diagnoses and appellant's disability.

The Board, therefore, concludes that Dr. Barnes' opinion that appellant had no employment-related disability is entitled to the special weight accorded an impartial medical examiner,[15] and the additional medical evidence submitted prior to the termination is insufficient to overcome the special weight accorded him as an impartial medical examiner regarding whether appellant was disabled due to the accepted left arm conditions. OWCP, therefore, properly terminated appellant's wage-loss compensation, effective July 1, 2012.[16]

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's wage-loss compensation on July 1, 2012, the burden shifted to her to establish that he or she had any disability causally

[13] *See Sharyn D. Bannick*, 54 ECAB 537 (2003).

[14] *I.J.*, 59 ECAB 408 (2008).

[15] *See supra* note 13.

[16] *Manuel Gill*, 52 ECAB 282 (2001).

related to the accepted knee conditions.[17] Causal relationship is a medical issue. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the specific employment factors identified by the claimant.[18]

ANALYSIS -- ISSUE 2

The Board finds that the medical evidence submitted after the July 1, 2012 termination of wage-loss compensation was insufficient to establish that appellant continued to be disabled from work due to her December 19, 2002 employment injury.

Dr. Shade submitted a number of reports from August 10, 2012 to February 20, 2014. In these reports he reiterated his findings and conclusions, indicating that appellant had consequential right shoulder and emotional conditions, and he opined that decreased muscle strength and left shoulder range of motion rendered appellant totally disabled. At no point did Dr. Shade discuss the specific duties of a transportation security screener or explain specifically why appellant could not perform these job duties.

Dr. Wilkerson, a psychiatrist who diagnosed an emotional condition and pain disorder associated with both psychological factors and a general medical condition, and Dr. Salinas, an attending orthopedic surgeon, did not render an opinion on appellant's ability to work. Dr. Jarolimek merely advised that appellant could perform activities within her tolerance. However, he did not comment on any work activities or specific period of disability. The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.[19]

As noted, Dr. Lee did not explain why appellant was disabled from work. Dr. Peccora, another attending psychiatrist, advised that due to the severity of chronic pain, appellant had been temporarily totally disabled secondary to the December 19, 2002 employment injury and had developed a severe psychological condition that prevented her from returning to work. Neither an emotional condition nor a consequential pain condition has been accepted as employment related and OWCP has not adjudicated this matter.[20]

Dr. Reuben, an orthopedic surgeon, began treating appellant in April 2015, 13 years after the employment injury and 5 years after she stopped work. While he diagnosed left shoulder impingement syndrome caused by the December 19, 2002 employment injury and generally advised that appellant was totally disabled, he did not explain the processes by which the December 29, 2002 employment injury caused appellant's continued disability. Likewise, while

[17] *See Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

[18] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[19] *Amelia S. Jefferson*, 57 ECAB 183 (2005).

[20] The Board's jurisdiction is limited to reviewing final decisions of OWCP. 20 C.F.R. § 501.2(c); *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

Dr. Moore diagnosed major depressive episode and chronic pain syndrome, directly caused by the December 19, 2002 employment injury and advised that appellant was temporarily totally disabled due to these conditions which should be accepted, he too did not sufficiently explain why this injury that occurred 13 years previously caused her continued disability. Moreover, the conditions diagnosed by Dr. Moore have not been accepted. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.[21]

The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and 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.[22] As there is no medical evidence of record of sufficient rationale to establish that appellant continued to be disabled due to the December 19, 2002 work injury, she did not meet her burden of proof to establish continuing employment-related disability after July 1, 2012 due to the accepted left shoulder conditions.

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, effective July 1, 2012. The Board further finds that she has not established continuing employment-related disability after July 1, 2012.

[21] *Thaddeus J. Spevack*, 53 ECAB 474 (2002).

[22] *Nicolette R. Kelstrom*, 54 ECAB 570 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 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