

ISSUE

The issue is whether OWCP properly terminated appellant's medical benefits, effective March 24, 2016.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On August 14, 2014 appellant, then a 58-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that a right shoulder injury occurred that morning when she was struck by a postcon (postal container). She explained that she was in an elevator with postcons and the elevator jerked and stopped suddenly. The sudden stop caused the postcons to move and at least one slammed into appellant, striking her right shoulder very hard. Appellant stopped work on August 14, 2014.

A July 1, 2014 right shoulder magnetic resonance imaging (MRI) scan revealed a large rotator cuff tear.

By decision dated October 1, 2014, OWCP initially denied appellant's claim, finding that she failed to establish causal relationship. Appellant timely requested a hearing, which was held on April 15, 2015.

A March 24, 2015 right shoulder MRI scan revealed findings consistent with a partial tear of the mid-supraspinatus tendon, as well as tendinosis of the infraspinatus. There was also evidence of acromioclavicular (AC) joint hypertrophy impinging on the rotator cuff, and subacromial/subdeltoid bursitis.

In a May 14, 2015 report, Dr. David E. Lent, a Board-certified orthopedic surgeon, diagnosed exacerbation of rotator cuff tear, rotator cuff tendinitis, shoulder impingement, bursitis, and biceps tear. He indicated that appellant's right shoulder worsened as a result of the new injury she sustained on August 14, 2014.

By decision dated June 3, 2015, OWCP's hearing representative set aside the October 1, 2014 decision, and remanded the case for further medical development.⁵

In a September 16, 2015 report, Dr. Mark Kramer, a Board-certified orthopedic surgeon and OWCP referral physician, described appellant's history of injury and treatment and performed and examination. He advised that, at the time of the injury, she had an x-ray and was discharged

⁴ *Order Remanding Case*, Docket No. 16-0700 (issued September 26, 2017) and Docket No. 16-0491 (issued September 27, 2017).

⁵ On November 29, 2015 appellant's representative appealed the June 3, 2015 decision to the Board. By order dated March 10, 2016, the Board dismissed the appeal because the case was in an interlocutory posture. *Order Dismissing Appeal*, Docket No. 16-0251 (issued March 10, 2016).

with a sling. Dr. Kramer noted that the right arm was minimally swollen and black and blue, and that appellant had been seeing her primary care physician, Dr. Lent, once a month. He further advised that a July 1, 2014 (preinjury) right shoulder MRI scan revealed a full-thickness rotator cuff tear. However, a March 24, 2015 repeat MRI scan did not reveal a full-thickness rotator cuff tear. Dr. Kramer concluded that the July 1, 2014 MRI scan report was inaccurate. He also advised that a physician's note from March 27, 2014 indicated that appellant was struck on the shoulder at work several months prior. Dr. Kramer surmised that, if that was the case, the current employment incident would be an exacerbation of a preexisting condition. He advised that in any event her condition had resolved and appellant could return to work without restrictions or further treatment. Dr. Kramer diagnosed a contusion of the right shoulder and opined that it was employment related. He completed a work restriction form for appellant advising that she had reached maximum medical improvement. Dr. Kramer indicated that she could perform her usual job. He noted a weight restriction of 50 pounds on pushing, pulling, lifting, squatting, kneeling, and climbing.

On October 1, 2015 OWCP accepted the claim for right shoulder contusion and sequela based on Dr. Kramer's September 16, 2015 findings. Appellant subsequently filed several claims for compensation (Form CA-7) for the period September 29 through October 17, 2014 and November 14, 2014 through October 16, 2015, and continuing.

By decision dated January 5, 2016, OWCP denied wage-loss compensation for the period November 4, 2014 through October 16, 2015. Appellant timely appealed to the Board.

On January 22, 2016 OWCP revised the statement of accepted facts (SOAF) and sought clarification from Dr. Kramer.⁶ Specifically, it inquired about whether appellant's accepted right shoulder contusion had resolved. OWCP also inquired as to whether appellant was capable of resuming her mail handler duties, but for her preexisting right shoulder tear.

In a January 29, 2016 supplemental report, Dr. Kramer noted that appellant could resume her duties as a mail handler. He also explained that the previously noted 50-pound weight restriction was reported in error. Lastly, Dr. Kramer explained that the preexisting right shoulder tear "probably was a radiographic abnormality...."

By decision dated February 5, 2016, OWCP denied wage-loss compensation for the period September 29 through October 17, 2014. Appellant appealed to the Board.

By order dated September 26, 2017, the Board set aside the February 5, 2016 decision.⁷ By decision dated September 27, 2017, the Board affirmed OWCP's January 5, 2016 decision.⁸

⁶ The latest SOAF included a description of appellant's mail handler duties, and noted that she had a nonwork-related history of a fall "with preexisting condition of right rotator cuff tear."

⁷ *Order Remanding Case*, Docket No. 16-1633 (issued September 26, 2017).

⁸ *See supra* note 4.

On February 18, 2016 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. Kramer's opinion. It afforded her 30 days to submit additional evidence or argument to the extent she disagreed with the proposed termination of FECA benefits.

OWCP subsequently received an October 24, 2014 treatment note from Dr. Lent, who indicated that appellant had been under his care for a rotator cuff tear, and that she was able to return to work in a limited-duty capacity, effective October 30, 2014.⁹

On March 24, 2016 OWCP terminated appellant's medical benefits, effective that date. It found that the weight of the evidence rested with Dr. Kramer, who determined that she could return to her date-of-injury job and that the residuals of the accepted condition had ceased.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden of proof to justify modification or termination of benefits.¹⁰ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.¹¹ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.¹² To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.¹³

ANALYSIS

OWCP accepted appellant's traumatic injury claim for right shoulder contusion and sequela. It based the acceptance of the claim on Dr. Kramer's September 16, 2015 second opinion examination. Although appellant's treating physician, Dr. Lent, had previously diagnosed right rotator cuff tear and recommended surgical intervention, OWCP has not accepted any additional right shoulder diagnoses.¹⁴ In terminating medical benefits, OWCP similarly relied on

⁹ OWCP also received additional copies of the March 24, 2015 MRI scan report and Dr. Lent's May 14, 2015 narrative report.

¹⁰ *Curtis Hall*, 45 ECAB 316 (1994).

¹¹ *Jason C. Armstrong*, 40 ECAB 907 (1989).

¹² *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

¹³ *Calvin S. Mays*, 39 ECAB 993 (1988).

¹⁴ Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury. *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004). OWCP's hearing representative previously determined that Dr. Lent's May 14, 2015 report was insufficient to satisfy appellant's burden of proof on causal relationship. However, the report was sufficient to establish a *prima facie* case, thereby warranting further medical development. Accordingly, OWCP referred appellant to Dr. Kramer for a second opinion examination. The January 22, 2016 SOAF noted that appellant had a nonwork-related history of a fall "with preexisting condition of right rotator cuff tear."

Dr. Kramer's opinion to find that appellant's accepted condition had resolved, and that she no longer required medical treatment.

The issue currently before the Board is not whether OWCP should have accepted additional right shoulder conditions, but whether it properly terminated medical benefits with respect to the sole accepted condition of right shoulder contusion and sequela. The Board finds that OWCP met its burden of proof to terminate appellant's medical benefits, effective March 24, 2016.

In his September 16, 2015 report, Dr. Kramer diagnosed an employment-related contusion of the right shoulder. He was aware that on August 14, 2014 a cart struck appellant on her right shoulder while she was in an elevator. Dr. Kramer was also aware that a prior July 1, 2014 right shoulder MRI scan had been interpreted as revealing a larger rotator cuff tear. He questioned the accuracy of the interpretation of that particular MRI scan. According to Dr. Kramer, right shoulder contusion was the sole diagnosis attributable to appellant's blunt trauma. He concluded that appellant's condition had "resolved," and that she did not require any further orthopedic treatment. Dr. Kramer also noted that appellant was not currently receiving physical therapy, and did not require any. Lastly, Dr. Kramer advised that appellant was able to return to work without restrictions, which he reiterated in his January 29, 2016 supplemental report.

In order to terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.¹⁵ Dr. Kramer was clearly of the opinion that appellant's accepted condition -- right shoulder contusion -- had resolved, and that she did not require further medical treatment. Appellant has not submitted any contemporaneous medical evidence that would suggest the presence of ongoing residuals due to her accepted right shoulder contusion and sequela. Accordingly, the Board finds that Dr. Kramer's opinion represents the weight of the medical evidence with respect to the need for ongoing medical treatment.

Appellant's representative argued that Dr. Lent's May 14, 2015 report is sufficient to support expansion of the claim. He also argued that Dr. Lent's fully-rationalized medical opinion should not be accorded less weight than Dr. Kramer's opinion given that both physicians are Board-certified orthopedic surgeons. Lastly, appellant's representative challenged OWCP's reliance on Dr. Kramer's opinion, arguing that he misinterpreted the right shoulder MRI scan and erroneously identified a 50-pound lifting restriction.

As noted, the issue on appeal is whether appellant's accepted right shoulder contusion had resolved, thereby obviating the need for further medical treatment. Dr. Kramer indicated that appellant's condition had resolved and she did not require further orthopedic treatment. Appellant has not submitted contemporaneous medical evidence indicating an ongoing need for treatment with respect to her accepted right shoulder contusion. Accordingly, OWCP properly relied on Dr. Kramer's opinion in terminating medical benefits with respect to appellant's accepted right shoulder contusion and sequela.

¹⁵ *Supra* note 13.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's medical benefits, effective March 24, 2016.

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 2018
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board