

employment-related disability on or after June 3, 2012 causally related to his accepted employment-related injuries.

FACTUAL HISTORY

On September 25, 2008 appellant, then a 40-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 29, 2008 he sustained multiple injuries after he slipped and fell on a wet floor while at work. OWCP assigned File No. xxxxxx282 and accepted the claim for sprain of right hip and thigh, sprain of left wrist, lesion of left ulnar nerve, contusion of left hand, other symptoms referable to right pelvic joint and thigh, and ganglion of bilateral tendon. On October 29, 2009 appellant underwent OWCP-approved left carpal tunnel release. OWCP paid him intermittent wage-loss compensation benefits on the supplemental rolls as of July 7, 2009.

On May 19, 2010 appellant filed another traumatic injury claim (Form CA-1) for injuries sustained when he slipped on a carpet at work. OWCP assigned File No. xxxxxx817 to this claim. By decision dated December 1, 2010, it accepted this claim for right shoulder sprain, sprain of left elbow, left wrist sprain, left chondromalacia patella, and tear of medial meniscus left knee.³ Appellant stopped work on February 19, 2011 and did not return. On February 24, 2011 he underwent authorized left carpal tunnel release.

OWCP paid appellant wage-loss compensation benefits on the periodic rolls as of March 13, 2011. On March 23, 2011 it combined appellant's current case, OWCP File No. xxxxxx282, with OWCP File No. xxxxxx817, the former being the master file.

On June 16, 2011 appellant underwent an authorized left knee meniscectomy.

OWCP prepared a statement of accepted facts (SOAF) on August 9, 2011 which only included appellant's accepted August 29, 2008 claim and the conditions accepted stemming from that claim.⁴

On August 9, 2011 OWCP referred appellant, a series of questions, the SOAF, and the medical record to Dr. Donald Mauldin, a Board-certified orthopedic surgeon, for a second opinion examination. It requested that the physician discuss whether appellant had residuals of his work-related conditions and whether he was capable of performing his full-time job as a letter carrier. OWCP noted that, if appellant was not capable of returning to his full-time employment, that the physician should complete a functional capacity evaluation (FCE).

In his September 19, 2011 report, Dr. Mauldin provided findings on physical examination and a summary of appellant's past medical history. He noted that an August 2011 magnetic

³ By decision dated June 14, 2012, OWCP granted appellant a schedule award for 3 percent permanent impairment of the left lower extremity, 2 percent additional impairment of the left upper extremity, and 11 percent additional impairment of the right upper extremity, under File No. xxxxxx817. The decision noted that appellant had previously been awarded five percent permanent impairment of the right upper extremity under File No. xxxxxx817, and seven percent permanent impairment of the left upper extremity under File No. xxxxxx282.

⁴ The SOAF noted the accepted work-related injuries of sprain of right hip and thigh, sprain of left wrist, lesion of left ulnar nerve, contusion of left hand, other symptoms referable to right pelvic joint and thigh, and ganglion of bilateral tendon.

resonance imaging (MRI) scan of the right shoulder demonstrated a full-thickness rotator cuff tear. Dr. Mauldin reported that appellant did not have residuals as it related to his original injury of right hip and thigh strain and left wrist sprain with development of carpal tunnel syndrome (CTS). He noted that appellant had returned back to work with no symptoms of significance until his May 19, 2010 injury. Dr. Mauldin further reported that he was capable of performing his job as a letter carrier as it related to the original August 29, 2008 injury. He reported that appellant was currently unable to return to full-time unrestricted work due to continued problems with his right shoulder which was due to a different injury. As disability pertaining to appellant's right shoulder did not relate to his August 29, 2008 injury, an FCE was unnecessary. Dr. Mauldin concluded that appellant could return to work without restrictions as his right hip strain/contusion and left wrist strain with CTS had resolved. He noted that his primary restriction would be relative to the right shoulder with any overhead lifting or heavy lifting on a recurrent basis due to a fall at work on May 19, 2010.

On January 4, 2012 OWCP provided Dr. Daniel C. Valdez, a Board-certified orthopedic surgeon and appellant's attending physician, a copy of Dr. Mauldin's report for review and comment pertaining to appellant's disability. On January 9, 2012 Dr. Valdez reported that he disagreed with Dr. Mauldin's findings that appellant was no longer disabled as a result of his employment-related injury and that he could return to work.

On January 26, 2012 OWCP referred appellant, a January 26, 2012 SOAF,⁵ the case file, a medical conflict statement, and a series of questions to Dr. John Anderson, a Board-certified orthopedic surgeon, for an impartial medical evaluation in order to resolve the conflict between Dr. Valdez and Dr. Mauldin regarding whether appellant's work-related injuries had resolved and if he could return to his date-of-injury position as a letter carrier.

On February 9, 2012 appellant underwent an FCE for the left wrist and left hand performed by Doreen Ruiz, a physical therapist (PT). PT Ruiz reported that appellant's usual and customary job required a medium physical demand classification level while his FCE revealed that he could function at the sedentary physical demand classification.

In a March 5, 2012 medical report, Dr. Anderson evaluated appellant and provided findings on physical examination. He reported that appellant suffered from a rotator cuff tear and a lateral meniscus tear. Dr. Anderson further noted that appellant had carpal tunnel releases and carpal tunnel syndrome, a right hip sprain which resolved, and a right knee of unknown extent. He reported that appellant was capable of returning to work at his usual job as a letter carrier. Dr. Anderson noted that he was at high risk for another injury since he had significant injuries in the past from simple slip and fall injuries, which should normally not cause too much injury. He

⁵ The January 26, 2012 SOAF listed appellant's accepted conditions under both master and subsidiary claims. It also noted the duties of a city carrier reporting, "Duties consist of handling heavy sacks of letter mail, parcel post and paper mail for sorting and distribution. Cases mail for delivery by sorting it in a rack, requires repetitive arm movements. May serve on many routes in all kinds of weather, drive trucks in all kinds of traffic under all road conditions, mount and dismount approximately 20 to 25 times per delivery day, deliver parcel post from trucks, collect mail from boxes. May be required to carry mailbag weighing up to 35 pounds on shoulder. To deliver from a vehicle, must place mail in trays and carry the trays to the vehicle; reaches out of the vehicle with the right hand to deposit mail and/or parcels in receptacles. Throughout the day must rearrange mail trays requiring extension of the arm and shoulder. Physical requirements are intermittent sitting, walking, standing, bending, squatting, climbing, twisting of the body, and lifting up to 70 pounds."

reported that appellant's lack of range of motion in his shoulder needed to be considered as he should not be doing any overhead work of a significant degree at the present time, however, it was not contraindicated, but rather that his tolerance would not allow it. Dr. Anderson noted that stairs and steps would be a significant problem for appellant due to his injuries to the knee, but they were not contraindicated. He reported that appellant could try to return to work in his usual position and if he could do it fine, and if he could not perform his duties then some other type of position would be necessary. With regard to which accepted work conditions had resolved, Dr. Anderson reported that appellant's right hip sprain and left hand and wrist problems had resolved. He noted that his left knee was stable and had essentially resolved, although appellant continued to complain of pain. Dr. Anderson reported that appellant's shoulder had not returned to normal, but the amount of symptom magnification led him to suspect that it was probably better than he related. In a work capacity evaluation form (OWCP-5c), he reported that appellant could return to full-time unrestricted work.

On April 9, 2012 OWCP notified appellant of a proposal to terminate his wage-loss compensation benefits based on Dr. Anderson's March 5, 2012 report that he no longer had any disability causally related to his employment injuries. It found that Dr. Anderson's report demonstrated that his accepted work injury no longer prevented him from returning to his full-duty position. OWCP provided appellant 30 days to submit additional information.

By letter dated April 30, 2012, counsel reported that there was confusion on the part of OWCP regarding appellant's two separate OWCP files under No. xxxxxx817 and No. xxxxxx282, and that medical documentation was being placed in the wrong file. He requested additional time to submit additional medical reports.

By decision dated May 9, 2012, OWCP terminated appellant's wage-loss compensation benefits effective June 3, 2012, finding that the special weight of the medical evidence rested with Dr. Anderson who found that appellant no longer had residual disability as a result of his work-related injuries.⁶ It did not terminate appellant's entitlement to medical benefits.

On May 9, 2013 appellant, through counsel, requested reconsideration of OWCP's termination decision. Counsel argued that Dr. Anderson's report was not entitled to the special weight of the medical evidence.

In support of his request for reconsideration, counsel submitted medical reports from Dr. Valdez dated October 14 and November 14, 2012. Dr. Valdez noted that appellant had been off work for injuries involving the left knee meniscus tear with surgery, left wrist traumatic ganglion cyst, CTS with surgery, and right shoulder rotator cuff tear with surgery. He noted that appellant had to return to work based on the recommendation of a second opinion physician, which

⁶ The record reflects that on May 10, 2012, appellant returned to work as a letter carrier. He stopped working on May 20, 2012 and filed an occupational disease claim (Form CA-2) alleging a worsening of his employment injuries. OWCP assigned File No. xxxxxx236. Appellant alleged pain and swelling in both his shoulders, arms, and wrists, left knee, right leg, neck, and lower back as a result of his employment duties. By decisions dated August 6, 2012 and January 14, 2013, OWCP denied appellant's occupational disease claim finding that the evidence of record failed to establish a diagnosed medical condition causally related to his federal employment duties. By decision dated April 23, 2015, the Board affirmed a July 1, 2014 OWCP decision denying appellant's request for reconsideration as untimely filed and failing to demonstrate clear evidence of error. Docket No. 15-472 (issued April 23, 2015).

resulted in a subsequent knee and wrist aggravation, as well as a new injury to the lumbar and cervical spine on May 10, 2012. Dr. Valdez diagnosed displacement of lumbar and cervical disc.

By decision dated August 7, 2013, OWCP denied modification of the May 9, 2012 decision terminating appellant's wage-loss compensation benefits. It determined that the evidence of record failed to support that the accepted conditions from this claim for right hip and thigh sprain, left sprain of wrist, left lesion of ulnar nerve, left contusion of hand, and left ganglion of tendon continued to be totally disabling. OWCP further reported that the medical reports which counsel contended were not provided to Dr. Anderson were not present in OWCP File No. xxxxxx282.

On August 1, 2014 appellant, through counsel, requested reconsideration of OWCP's decision. Counsel argued that Dr. Anderson could not resolve a conflict in medical opinion as both Dr. Mauldin, serving as the second opinion physician, and Dr. Valdez indicated that he could not return to full unrestricted duty as a result of his right shoulder condition. He argued that Dr. Anderson did not determine that appellant's right shoulder condition had resolved, and failed to request an FCE pertaining to his left knee or right shoulder. Dr. Anderson failed to provide a rationalized opinion as to why appellant could return to full-duty work despite issues relating to his left knee and right shoulder. Counsel argued that the physician failed to consider appellant's employment duties and contradicted the medical findings which showed that appellant could not return to full duty. As such, Dr. Anderson's report was not entitled to the special weight of the medical evidence.

In a July 19, 2014 report, Dr. Valdez discussed appellant's injuries and treatment following his return to work. He reported that appellant's dysfunction pertaining to his shoulder, wrist, and knee resulted in additional strain to his cervical and lumbar spine than would normally occur, placing increased force at the disc levels which created the cervical and lumbar disc displacement. Dr. Valdez explained that his employment duties following his return to work were a direct cause of his injury, which required repetitively lifting boxes weighing 40 pounds. He reported that Dr. Anderson acknowledged that there was a high risk of reinjury, and it was unclear why appellant was then released back to a job which exceeded his physical capacity.

By decision dated November 3, 2014, OWCP denied modification of the August 7, 2013 decision. It found that the special weight of the medical evidence rested with Dr. Anderson's March 5, 2012 report which established that appellant was no longer disabled due to his accepted work-related injuries under OWCP File Nos. xxxxxx282 and xxxxxx817.⁷

⁷ OWCP reported that appellant was paid full lost wages from February 19, 2011 to June 2, 2012 under this claim, OWCP File No. xxxxxx282, but his job offer was under OWCP File No. xxxxxx817 dated September 27, 2010 which required lifting five-pound parcels for one hour per day, reaching above the left shoulder intermittently for one hour per day to case, standing to case mail with left arm for two hours per day, walking while loading/unloading vehicle and/or in office for up to two hours per day, and grasping mail while casing or delivering for up to eight hours. It noted that his job offer did not indicate that he was required to lift 40 pounds as indicated in Dr. Valdez's July 19, 2014 report.

On October 30, 2015 appellant, through counsel, requested reconsideration of OWCP's decision and asserted prior arguments made. In support of his claim, appellant submitted medical reports dated May 20 through July 22, 2015 from Dr. Valdez documenting his medical treatment.⁸

By decision dated January 27, 2016, OWCP denied modification of its November 3, 2014 decision, finding that the special weight of the medical evidence rested with Dr. Anderson serving as the impartial medical examiner.

On January 23, 2017 appellant, through counsel, requested reconsideration of OWCP's decision. Counsel referred to medical reports from Dr. Valdez which established that appellant was disabled due to problems with his right shoulder, left wrist, and right hip. He further noted that a September 30, 2016 MRI scan of the right and left shoulder established continued injury.

Medical reports dated December 3, 2015 through January 12, 2017 were submitted from Dr. Valdez. In an October 5, 2016 report, Dr. Valdez noted that a September 30, 2016 MRI scan of the left shoulder revealed degenerative changes, rotator cuff tendinopathy with a full-thickness tear of the supraspinatus tendon, and subacromial fluid and bursitis. A right shoulder MRI scan revealed postoperative changes, degenerative changes, rotator cuff tendinopathy with a probable full-thickness tear at the anterior insertion of the supraspinatus tendon with bursitis, and fluid in the subacromial space. Dr. Valdez diagnosed left shoulder rotator cuff syndrome impingement and severe and chronic right shoulder pain, related to the August 29, 2008 employment injury. He reported that appellant was disabled due to his left knee, left wrist, and bilateral shoulder injuries. Dr. Valdez further reported that appellant's recent cervical spine surgery also rendered him disabled, noting that his injuries and surgeries were cumulative and rendered him incapable of returning to work.

By decision dated March 24, 2017, OWCP denied modification of its January 27, 2016 decision, finding that the special weight of the medical evidence rested with Dr. Anderson's March 5, 2012 impartial medical evaluation.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁹ 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.¹⁰

⁸ The Board notes that on September 3, 2015 appellant filed a claim for a schedule award (Form CA-7). In support of his claim, he provided a July 22, 2015 impairment evaluation from Dr. Valdez which was reviewed by an OWCP district medical adviser (DMA) on September 17, 2015. By decision dated September 9, 2015, OWCP granted appellant a schedule award for five percent permanent impairment of the right lower extremity for his right hip injury.

⁹ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

¹⁰ *Id.*

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation benefits.¹¹

The Board finds initially that the August 9, 2011 SOAF used by Dr. Mauldin for his second opinion evaluation was deficient as it failed to provide pertinent information regarding the case.¹² Dr. Mauldin was asked to determine whether appellant had residuals of his accepted conditions and whether he could return to his full-time employment as a letter carrier, but the SOAF failed to identify appellant's accepted May 19, 2010 employment-related conditions of right shoulder sprain, sprain of left elbow, left wrist sprain, left chondromalacia patella, and tear of medial meniscus left knee under OWCP File No. xxxxxx817. He therefore used an inaccurate SOAF as his framework when he opined that appellant could return to full-time unrestricted work. Dr. Mauldin explained that as appellant's disability related to his right shoulder, an FCE was unnecessary. OWCP procedures and Board precedent indicate that when an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.¹³ Dr. Mauldin was not provided an accurate framework regarding appellant's accepted employment-related conditions and as such, his opinion is of limited probative value and is therefore insufficient to create a conflict in medical opinion.¹⁴

Dr. Anderson was selected to resolve the conflict of medical opinion as to whether appellant still had residuals of the accepted employment injuries. As no conflict existed in the medical evidence at the time of this referral, the Board finds that his report may not be afforded the special weight of an impartial medical specialist and should be considered for its own intrinsic value.¹⁵

In his March 5, 2012 report, Dr. Anderson reported that appellant suffered from a rotator cuff tear and a lateral meniscus tear of the left knee. He determined that appellant was capable of returning to work at his usual job as a letter carrier. However, Dr. Anderson failed to provide a sufficient explanation explaining why, despite diminished examination findings pertaining to the right shoulder, appellant was able to resume his normal and customary employment duties. He noted that appellant could resume regular-duty work, but should not perform any overhead work due to lack of range of motion. This opinion fails to establish that his right shoulder condition had resolved without the need for any work restrictions. In fact, Dr. Anderson reported that appellant's

¹¹ *N.C.*, Docket No. 15-1855 (issued June 3, 2016).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.5 (September 2009); see also *Darletha Coleman*, 55 ECAB 143 (2003).

¹³ FECA Procedure Manual, *id.* at Chapter 2.809.4. See also *A.C.*, Docket No. 07-2423 (issued May 15, 2008). The Board held that the SOAF did not accurately reflect the conditions OWCP accepted as employment related and, therefore, the physician's report was of diminished probative value, and insufficient to resolve the conflict in medical opinion.

¹⁴ *L.J.*, Docket No. 14-1682 (issued December 11, 2015).

¹⁵ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

right shoulder injury had not resolved. He further contradicted himself by indicating that appellant required no restrictions even though stairs and steps would be a significant problem for him due to his knee injury. Dr. Anderson's recommendation was vague and speculative, noting that if appellant could not perform his duties adequately then he could try another position.¹⁶ His report is not sufficiently well rationalized to establish that appellant was no longer disabled due to his accepted employment injuries.¹⁷

The Board finds, therefore, that OWCP erred by terminating appellant's compensation effective June 3, 2012.¹⁸

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation benefits.¹⁹

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2017 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 6, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁶ *H.W.*, Docket No. 15-1126 (issued August 15, 2016).

¹⁷ *V.C.*, Docket No. 11-1561 (issued February 15, 2012).

¹⁸ *Fay Johnson*, Docket No. 04-1358 (issued September 30, 2004).

¹⁹ Given the disposition of the first issue, the Board finds that the second issue of continuing disability is moot.