

**United States Department of Labor  
Employees' Compensation Appeals Board**

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M.C., Appellant )  
and ) Docket No. 18-1374  
U.S. POSTAL SERVICE, NORTHERN NEW )  
JERSEY PROCESSING & DISTRIBUTION )  
CENTER, Teterboro, NJ, Employer )  
Issued: April 23, 2019  
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)

*Appearances:*

*James D. Muirhead, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 5, 2018 appellant, through counsel, filed a timely appeal from a February 26, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

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

<sup>2</sup> 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 and medical benefits, effective April 12, 2016, as she no longer had residuals or disability causally related to her accepted conditions; and (2) whether appellant has established continuing employment-related disability or residuals on or after April 12, 2016 due to the accepted employment injuries.

## **FACTUAL HISTORY**

On April 26, 2007 appellant, then a 40-year-old flat sorter clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained right shoulder, arm, and neck pain on April 26, 2007 when keying the mail while in the performance of duty. She returned to full-time light-duty work on April 26, 2007. On July 16, 2007 OWCP accepted a sprain of the right shoulder and upper arm, as well as disorder of the bursae and tendons in the right shoulder.

On April 30, 2007 appellant filed an occupational disease claim (Form CA-2) alleging that constant bending and lifting in the performance of her federal job duties resulted in a back condition. OWCP accepted this claim for sprain of the lumbar region and displacement of lumbar intervertebral disc without myelopathy.

On April 12, 2010 appellant underwent right shoulder arthroscopy due to right shoulder impingement with partial rotator cuff tear. OWCP authorized wage-loss compensation benefits for total disability beginning April 12, 2010. On November 17, 2010 Dr. Mark J. Ruoff, a Board-certified orthopedic surgeon, released appellant to return to light-duty work five hours a day due to her accepted shoulder condition. Appellant returned to work on December 6, 2010.

On August 1, 2013 appellant filed a notice of recurrence (Form CA-2a) alleging that on July 15, 2013, her right arm condition rendered her totally disabled beginning July 18, 2013. In a note dated July 24, 2013, Dr. Ruoff found that she was experiencing increased neck, right shoulder, and right arm pain. He diagnosed cervical radiculitis, right shoulder tendinitis and bursitis, and tendinitis of the right forearm with lateral epicondylitis. Dr. Ruoff found that appellant was totally disabled.

By development letter dated August 28, 2013, OWCP informed appellant that her July 15, 2013 recurrence claim should be developed as a new occupational disease claim due to additional exposures to work duties.<sup>3</sup>

On November 14, 2013 OWCP accepted appellant's July 15, 2013 claim for exacerbation of disorder of the bursae and tendons in the right shoulder as well as exacerbation of right shoulder and upper arm strain. On November 13, 2013 Dr. Ruoff released her to return to light-duty work for four hours a day. He continued to support appellant's partial disability from work.

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<sup>3</sup> On November 26, 2013 OWCP combined OWCP File No. xxxxxxx499 and OWCP File No. xxxxxxx970 and designated OWCP File No. xxxxxxx499 as the master file.

On February 4, 2014 OWCP referred appellant, a statement of accepted facts (SOAF), and a list of questions for a second opinion evaluation with Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon. Dr. Lakin completed a report on February 18, 2014 and opined that she could return to her date-of-injury position full-time, with no restrictions. He found that all of appellant's accepted conditions had resolved and that she had only minimal objective findings of tenderness to the posterior and lateral aspects of her right shoulder.

On March 19, April 23 and June 25, 2014, Dr. Ruoff reviewed appellant's cervical magnetic resonance imaging (MRI) scan and diagnosed mild degenerative disc disease at C5-6 and C4-5 as well as right foraminal stenosis. He diagnosed cervical radiculitis, cervical disc ridge complex, history of right shoulder tendinitis, bilateral lateral epicondylitis, bilateral carpal tunnel syndrome, and history of peripheral neuropathy upper extremity. Dr. Ruoff opined that appellant should continue to work restricted duty.

The case record contains a bypass history for searches performed using the Medical Management Application. An Appointment Schedule Notification form (Form ME023) dated August 14, 2014 indicated that Dr. Samuel Snyder, a Board-certified orthopedic surgeon, was bypassed due to a conflict as appellant had been seen by one of the physicians affiliated with his practice. In a separate Form ME023 dated October 24, 2014, OWCP selected Dr. Snyder to serve as the impartial medical examiner (IME).

In a letter dated November 5, 2014, OWCP informed appellant that in order to resolve a conflict of medical opinion evidence between Drs. Lakin and Ruoff, regarding her diagnosis, it was necessary for her to undergo an impartial medical examination by Dr. Snyder. It provided him with a SOAF and a list of questions.

In a December 23, 2014 report, Dr. Snyder reviewed the SOAF and reported his findings on physical examination. He found no evidence of compressive neuropathy at the median, ulnar, or radial nerves. Dr. Snyder reported no visible atrophy of the right shoulder musculature and full range of motion. He reviewed appellant's right shoulder MRI scan which suggested a rotator cuff tear, but found that his physical examination did not support this condition. Dr. Snyder found that she exhibited no objective findings in the right shoulder and only subjective nonspecific complaints of minor pain at the right shoulder. He determined that appellant could return to her date-of-injury position eight hours a day without restrictions. Dr. Snyder concluded that she did not require any further medical treatment due to her accepted employment injuries.

In his March 11, 2015 notes, Dr. Ruoff found muscle spasm in the right trapezius and trigger point on the right trapezius. He recommended that appellant continue restricted duty working four hours a day and lifting no more than 30 pounds. Dr. Ruoff continued to support her partial disability from work through January 2016.

On March 10, 2016 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. Snyder's report. It found that the special weight of the medical opinion evidence rested with the opinion of him and afforded her 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

Appellant provided March 2, 2016 treatment notes from Dr. Ruoff indicating that she was partially disabled and should work only four hours a day.

By decision dated April 12, 2016, OWCP terminated appellant's wage-loss compensation and medical benefits, effective April 12, 2016, finding that Dr. Snyder's December 23, 2014 report was entitled to the special weight of the medical opinion evidence.

In a report dated April 7, 2016, Dr. Ruoff diagnosed chronic right shoulder tendinitis and bursitis, cervical disc disease with right radiculopathy, and history of trigger points in the right trapezius. He recommended additional electrodiagnostic studies. Dr. Ruoff opined that appellant's symptoms were chronic, that her condition was permanent, and that her condition was due to the repetitive nature of her work. He further opined that she was not fit to return to full duty and should perform restricted duty on a permanent basis. Dr. Ruoff reported objective findings of degenerative disc disease in the cervical spine as well as consistent and persistent subjective symptomatology. He continued to provide work restrictions.

On April 22, 2016 appellant underwent an additional right shoulder and cervical spine MRI scans.

On May 3, 2016 appellant requested a review of the written record from an OWCP hearing representative. She provided May 11, June 15, and July 20, 2016 notes from Dr. Ruoff indicating that she was partially disabled for work.

By decision dated September 16, 2016, OWCP's hearing representative affirmed the April 12, 2016 termination decision, finding that Dr. Snyder's December 23, 2014 report was entitled to the special weight of the medical opinion evidence.

On September 22, 2016 appellant, through counsel, requested reconsideration of the September 16, 2016 OWCP decision. He asserted that Dr. Snyder was improperly selected as the IME. Counsel provided a Form ME023 and bypass report which indicated that appellant had been seen by one of the physicians in Dr. Snyder's practice.

On February 23, 2018 OWCP contacted Dr. Snyder's office and established that, although appellant had been directed to attend an examination with one of his associates, she had not appeared for that examination, and had not in fact been examined by another physician associated with Dr. Snyder's practice.

By decision dated February 26, 2018, OWCP denied modification of the September 16, 2016 decision. It investigated appellant's claim that Dr. Snyder should have been bypassed and confirmed that she had not, in fact, been examined by one of his associates.

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

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.<sup>4</sup> After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>7</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>8</sup>

Section 8123(a) 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.<sup>9</sup> The implementing regulations provides 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.<sup>10</sup>

In situations where there exist opposing reports of virtually equal weight and rationale and the case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>11</sup>

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<sup>4</sup> See R.P., Docket No. 17-1133 (issued January 18, 2018); S.F., 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>5</sup> See R.P., *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>6</sup> See R.P., *id.*; *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>7</sup> See R.P., *id.*; A.P., Docket No. 08-1822 (issued August 5, 2009); T.P., 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005). *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>8</sup> See R.P., *id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake*, *id.*

<sup>9</sup> 5 U.S.C. § 8123(a); see R.P., *id.*; R.S., Docket No. 10-1704 (issued May 13, 2011); S.T., Docket No. 08-1675 (issued May 4, 2009); M.S., 58 ECAB 328 (2007).

<sup>10</sup> 20 C.F.R. § 10.321; R.C., 58 ECAB 238 (2006).

<sup>11</sup> See R.P., *supra* note 4; *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

## **ANALYSIS -- ISSUE 1**

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective April 12, 2016, as she no longer had residuals or disability causally related to her accepted employment injuries .

OWCP accepted that appellant sustained sprain of the right shoulder and upper arm, as well as disorder of the bursae and tendons in the right shoulder, sprain of the lumbar region and displacement of lumbar intervertebral disc without myelopathy, right shoulder impingement with partial rotator cuff tear and resulting surgery, and exacerbation of disorder of the bursae and tendons in the right shoulder as well as exacerbation of right shoulder and upper arm strain.

OWCP properly determined that a conflict in medical opinion arose between Dr. Ruoff, appellant's attending physician, and Dr. Lakin, an OWCP referral physician, regarding her current condition and the extent of her disability due to her employment injuries. It referred her to Dr. Snyder, a Board-certified orthopedic surgeon, for an impartial medical examination, pursuant to 5 U.S.C. § 8123(a).

Where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>12</sup> The Board finds that the opinion of Dr. Snyder is well rationalized and based on a proper factual and medical history. Dr. Snyder accurately summarized the relevant medical evidence, provided detailed findings on examination, and reached conclusions about appellant's condition which comported with his findings.<sup>13</sup> In a report dated December 23, 2014 report, he found no evidence of compressive neuropathy at the median, ulnar, or radial nerves. Dr. Snyder reported no visible atrophy of the right shoulder musculature and full range of motion. He reviewed appellant's right shoulder MRI scan which suggested a rotator cuff tear, but found that his physical examination did not support this condition. Dr. Snyder found that she exhibited no objective findings in the right shoulder and only subjective nonspecific complaints of minor pain at the right shoulder. He determined that appellant could return to her date-of-injury position eight hours a day with no restrictions. Dr. Snyder concluded that she did not require any further medical treatment for her accepted employment injuries. As his report is detailed, well-rationalized, and based on a proper factual background, his opinion is entitled to the special weight accorded an IME.<sup>14</sup>

Counsel argued before OWCP that Dr. Snyder cannot serve as an IME as he was not properly selected by OWCP. He contended that OWCP improperly selected him as IME on October 24, 2014 when it had bypassed him as IME on August 14, 2014 as their record reflected that appellant had been examined by a physician in his practice. OWCP has disputed the bypass information contained in the August 14, 2014 Form ME023 and asserted that while she was

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<sup>12</sup> C.S., Docket No. 18-0952 (issued October 23, 2018).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

referred to another physician in Dr. Snyder's practice, she was not in fact examined by this physician as she failed to appear for the scheduled appointment. There is no dispositive evidence that OWCP failed to conform to its procedures.<sup>15</sup>

The remaining evidence submitted prior to OWCP's termination of appellant's wage-loss compensation and medical benefits is insufficient to overcome the special weight afforded Dr. Snyder as the IME. Dr. Ruoff submitted a series of reports repeating his findings and conclusions that she was partially disabled and require further medical treatment due to her accepted conditions. He also attributed appellant's disability to cervical conditions not accepted by OWCP. Dr. Ruoff, however, was on one side of the conflict resolved by Dr. Snyder. A medical report from a physician on one side of a conflict resolved by an IME is generally insufficient to overcome the special weight accorded the report of an IME or to create a new conflict.<sup>16</sup>

The Board, therefore, finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective April 12, 2016.

#### **LEGAL PRECEDENT -- ISSUE 2**

Once OWCP properly terminates a claimant's compensation benefits, he or she has the burden of proof to establish continuing disability or residuals after that date causally related to the accepted injury.<sup>17</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>18</sup> A claimant must establish by the weight of the reliable, probative, and substantial evidence that he or she had an employment-related disability or residuals of his or her accepted condition which continued after termination of compensation benefits.<sup>19</sup>

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

The Board finds that appellant has not established that she had continuing employment-related disability or medical residuals on or after April 12, 2016 due to the accepted employment injuries.

Following the termination of her wage-loss compensation and medical benefits, appellant submitted a report dated April 7, 2016 from Dr. Ruoff diagnosing chronic right shoulder tendinitis and bursitis, cervical disc disease with right radiculopathy, and history of trigger points in the right trapezius. Dr. Ruoff listed his objective findings of degenerative disc disease in the cervical spine with consistent and persistent subjective symptomatology. He opined that appellant's symptoms

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<sup>15</sup> A.R., Docket No. 18-0632 (issued October 19, 2018).

<sup>16</sup> *Id.*

<sup>17</sup> See J.R., Docket No. 17-1352 (issued August 13, 2018).

<sup>18</sup> *Id.*

<sup>19</sup> *Supra* note 17.

were chronic, that her condition was permanent, and that her condition was due to the repetitive nature of her work. Dr. Ruoff continued to provide work restrictions. He determined that appellant could not return to full duty and should perform restricted duty on a permanent basis.

While the report from Dr. Ruoff is generally supportive of specific continuing employment-related residuals and disability, it does not provide adequate medical rationale explaining how the diagnosed conditions or resultant disability were caused by the employment injury.<sup>20</sup> Further, OWCP has not accepted chronic right shoulder tendinitis and bursitis, cervical disc disease with right radiculopathy, or history of trigger points in the right trapezius. Where appellant claims that a condition not accepted or approved by OWCP was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.<sup>21</sup> Dr. Ruoff did not provide any rationale for his opinion that the work injury caused additional conditions. Medical conclusions unsupported by rationale are of little probative value.<sup>22</sup>

On April 22, 2016 appellant underwent additional right shoulder and cervical spine MRI scans. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between her employment duties and a diagnosed condition.<sup>23</sup>

Appellant has not submitted rationalized medical evidence establishing continuing employment-related disabilities or residuals on or after April 12, 2016 due to the accepted employment injuries. As such, the Board finds that she 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 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective April 12, 2016, as she no longer had residuals of her accepted employment injuries. The Board further finds that she has not established continuing employment-related disability or residuals after April 12, 2016 causally related to the accepted employment injuries.

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<sup>20</sup> G.T., Docket No. 17-1959 (issued June 22, 2018).

<sup>21</sup> C.S., *supra* note 12.

<sup>22</sup> *Id.*

<sup>23</sup> K.V., Docket No. 18-0723 (issued November 9, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy 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