



has met her burden of proof to establish continuing disability or residuals on or after December 1, 2017 causally related to her December 6, 2012 employment injury; and (3) whether appellant has established that the acceptance of her claim should be expanded to include additional conditions as a result of her accepted employment injury.

### **FACTUAL HISTORY**

On December 6, 2012 appellant, then a 37-year-old sales distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she injured her right shoulder when she lifted a package out of a cage while in the performance of duty. She did not immediately stop work following the injury. On December 27, 2013 OWCP accepted the claim for right shoulder strain.

A July 14, 2013 magnetic resonance imaging (MRI) scan found mild degenerative acromioclavicular (AC) joint changes, but no impingement. Diagnoses included mild subdeltoid bursitis and mild AC joint degenerative changes.

On July 30, 2014 appellant underwent an OWCP-authorized right shoulder arthroscopic rotator cuff repair, performed by Dr. Bryan T. Edwards, a Board-certified orthopedic surgeon and sports medicine physician. By letter dated September 10, 2014, OWCP paid appellant compensation on the periodic rolls for temporary total disability, with the first payment covering the period July 31 to August 23, 2014.

On February 25, 2015 appellant underwent a second OWCP-authorized right shoulder arthroscopic rotator cuff repair, also performed by Dr. Edwards.

On May 18, 2015 OWCP referred appellant for a second opinion evaluation with Dr. Harrison A. Latimer, a Board-certified orthopedic surgeon, for an opinion regarding the status of the accepted condition, appropriate treatment, and extent of disability. Dr. Latimer, in a June 17, 2015 report, performed a physical examination and reviewed the statement of accepted facts (SOAF) and medical records. Appellant's physical examination revealed full right shoulder range of motion and no significant muscle weakness. Based on review of objective findings, Dr. Latimer found that the accepted right shoulder "sprain" had resolved. He determined that appellant's subjective complaints clearly outweighed the objective findings. Dr. Latimer attributed her continued pain complaints to upper extremity neuritis and opined that she was unable to perform her date-of-injury job. He recommended that a functional capacity evaluation (FCE), nerve conduction velocity study, and electromyography be performed.

In a July 15, 2015 report, Dr. Edwards noted appellant's medical history, which included two shoulder surgeries due to her rotator cuff injury. He reported that her first shoulder surgery involved decompression shoulder surgery due to repetitive overuse of her shoulder. As a result of rehabilitation following the surgery, appellant developed a tear, which resulted in rotator cuff tear repair surgery. Diagnoses included bilateral upper extremity weakness and cervical radiculopathy, which he attributed to her employment duties. Dr. Edwards further observed that these conditions were not preexisting, but were instead a direct result of her repetitive overuse at work. He concluded that appellant was currently limited by cervical conditions and that she had progressed as far as possible with respect to her rotator cuff condition.

Dr. Edwards, in an October 14, 2015 report, noted that he had treated appellant for a December 6, 2012 right shoulder employment injury. He summarized her history of injury and medical treatment provided, including surgeries performed on July 30, 2014 and February 25, 2015. Dr. Edwards reported that appellant had complained of neck and arm pain, but the focus at the time had been more on her shoulder issues. As her shoulder condition improved, he noted that her underlying cervical condition became the focus of her issues. Dr. Edwards opined that appellant also sustained a neck injury due to the accepted December 6, 2012 employment injury and that she was currently dealing with the ramifications of that injury.

On June 17, 2016 OWCP received an addendum from Dr. Latimer clarifying his prior opinion. Dr. Latimer opined that appellant required no further treatment for her shoulder problem, but required treatment for carpal tunnel syndrome.

By decision dated March 14, 2017, OWCP denied expansion of the acceptance of appellant's claim to include a cervical condition, finding that the evidence of record was insufficient to establish causal relationship between the cervical condition and the accepted December 6, 2012 employment injury.

Dr. Edwards, in a July 17, 2017 report, related that since the 2012 employment injury appellant had neck, arm, and shoulder pain. Appellant's physical examination revealed mildly painful shoulder forward flexion, full right shoulder internal and external rotation, right-side C5 dermatome sensory loss, and 2+ triceps, biceps, and brachioradialis reflexes. She complained of headaches when putting her head into deep flexion and extension. Dr. Edwards diagnosed healed right shoulder rotator cuff repair, cervical neuralgia due to multilevel cervical fusion, right arm weakness, and headaches. He opined that appellant's rotator cuff injury had resolved and that her current limitations were neurologically caused.

In a July 27, 2017 report, Dr. Edwards summarized appellant's medical history, noted her pain complaints, and provided physical examination findings. Under assessment, he diagnosed cervical neuralgia due to multilevel cervical fusion and healed right shoulder cuff repair. Dr. Edwards opined that appellant was capable of working with restrictions of no lifting more than five pounds with her right arm.

In a letter dated August 24, 2017, OWCP referred appellant, a SOAF, and list of questions, for a second opinion evaluation with Dr. Joseph Estwanik, a Board-certified orthopedic surgeon, to determine the status of appellant's accepted condition and disability. The questions included: (1) whether the accepted condition of right shoulder sprain had resolved; (2) whether there are any residual conditions causally related to the December 6, 2012 employment injury; (3) whether the diagnosed conditions are medically connected to the accepted factors of employment; (4) whether appellant is able to return to her date-of-injury position as a sales and distribution associate; and (5) if she is not able to return to her date-of-injury job, is she able to work in a limited capacity.

In a September 13, 2017 report, Dr. Estwanik noted appellant's December 6, 2012 employment injury, reviewed the medical record, and provided detailed physical examination findings. He noted that appellant reported an unstable right shoulder in addition to cervical, left shoulder, right hand, and upper back pain complaints. Appellant also reported an inability to sleep on her side, wash her back, put her coat on, reach a high shelf, throw a ball, or lift 10 pounds above

her shoulder. Dr. Estwanik also noted that the June 7, 2015 emergency room records indicated that appellant had been diagnosed with pneumothorax and rib fractures after a recent fall at home. He noted that the accepted employment-related condition was right shoulder strain. Physical examination findings included no audible or palpable right shoulder crepitance with active movement, full bilateral internal and external passive rotation, negative forward flexion, and negative abduction impingement testing. Dr. Estwanik opined that the accepted condition of right shoulder sprain had resolved. He pointed out that a January 14, 2013 MRI scan confirmed no rotator cuff abnormality or relationship to the December 6, 2012 employment injury. The only diagnosis made on the MRI scan was mild bursitis and preexisting mild AC joint inflammation. Furthermore, the operative note 19 months after the employment injury confirmed an intact rotator cuff with no tear observed. The first evidence of a small right rotator cuff tear was two years after the date of injury, which Dr. Estwanik opined was “remote to her mechanism of injury and is remote to the objective first MRI scan that demonstrated an intact rotator cuff.”

In response to a specific question as to whether appellant had residual conditions causally related to the December 6, 2012 employment injury, he responded that she had an excellent recovery and no residual conditions due to the December 6, 2012 employment injury. Dr. Estwanik also explained that her current cervical complaints were unrelated to the accepted right shoulder sprain. He opined that appellant was able to return to her regular job as it related to the resolved accepted employment injury. Dr. Estwanik concluded that she required treatment for her preexisting depression, which was unrelated to her accepted employment injury. He further opined that “the remote surgeries were not related to or attributable to the accepted facts of shoulder strain by the anatomic findings produced on [the] initial MRI [scan] and the initial arthroscopic procedure.”

In a letter dated September 29, 2017, OWCP proposed to terminate appellant’s wage-loss compensation and medical benefits based on Dr. Estwanik’s September 13, 2017 report. It informed her that Dr. Estwanik found that she no longer had residuals or disability causally related to the December 6, 2012 employment injury as her accepted condition of “sprain of shoulder and upper arm, other specified sites, right” had resolved. OWCP afforded appellant 30 days to respond if she disagreed with the proposed termination.

On October 20, 2017 counsel requested that the acceptance of appellant’s claim be expanded to include the additional condition of rotator cuff tear, for which OWCP had previously authorized surgery.

In a letter dated October 26, 2017, counsel disagreed with the proposal to terminate appellant’s wage-loss compensation and medical benefits. He asserted that she had developed a consequential rotator cuff injury as the result of the first authorized arthroscopic surgery. Counsel further asserted that, prior to terminating appellant’s compensation, OWCP should develop the issue of whether she developed depression as a consequence of her accepted December 6, 2012 employment injury.

Counsel submitted an October 25, 2015 report by Dr. Edwards attributing the right rotator cuff tear to the physical therapy appellant received following her July 30, 2014 right shoulder surgery.

By decision dated December 4, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that same date, finding that the weight of the evidence rested with Dr. Estwanik who found that appellant no longer had residuals or disability causally related to the accepted employment injury.

On December 11, 2017 counsel again wrote to OWCP and noted that it had not responded to his previous requests to expand acceptance of appellant's claim to include the right rotator cuff tear for which she had undergone authorized surgery. He also requested that acceptance of appellant's claim be expanded to include depression, as diagnosed by Dr. Estwanik.

On March 6, 2018 appellant, through counsel, requested reconsideration. Counsel asserted that OWCP's decision to terminate wage-loss compensation and medical benefits was premature as it had failed to consider the request to expand acceptance of her claim to include additional consequential conditions. He noted that he had requested that OWCP expand her claim several times as well as having submitted additional evidence supporting the expansion of her claim. In support of the reconsideration request, counsel submitted letters that he had written concerning the request to expand appellant's claim.

By decision dated May 8, 2018, OWCP noted that counsel had, on several occasions, requested that the acceptance of appellant's claim be expanded to include the condition of rotator cuff tear, for which surgery had been authorized. However, it denied modification of the December 4, 2017 termination decision, finding that the letters counsel submitted were irrelevant as the underlying issue was medical in nature.

### **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.<sup>3</sup> After it has determined that an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>4</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>6</sup> To terminate authorization for medical treatment, OWCP must

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<sup>3</sup> *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>4</sup> *D.M.*, Docket No. 17-1992 (issued September 12, 2018); *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>5</sup> *R.P.*, *supra* note 3; *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>6</sup> *D.M.*, *supra* note 4; *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>7</sup>

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

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 1, 2017.

On August 24, 2017 OWCP referred appellant for a second opinion evaluation with Dr. Estwanik to determine whether she had ongoing residuals or disability and the status of her accepted condition. It noted that it provided Dr. Estwanik with a SOAF, the medical record, and a list of questions. In a report dated September 13, 2017, Dr. Estwanik opined that appellant's right shoulder sprain had resolved.

The Board notes that the list of questions sent to Dr. Estwanik directed him to refer to an attached SOAF. However, the list of questions found in the record does not contain such an attachment. It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.<sup>8</sup> OWCP's procedures dictate 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.<sup>9</sup> As it remains unclear whether Dr. Estwanik based his opinion on an accurate SOAF, the Board finds that the probative value of Dr. Estwanik's opinion is diminished and insufficient to be afforded the weight of the medical evidence.<sup>10</sup>

The Board therefore finds that OWCP failed to meet its burden of proof in terminating appellant's wage-loss compensation and medical benefits, effective December 1, 2017, based on Dr. Estwanik's second opinion report.<sup>11</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that the case is not in posture for decision.

The Board notes that when OWCP referred appellant for a second opinion evaluation with Dr. Estwanik, it provided a list of questions which included whether appellant's diagnosed conditions are medically connected to the accepted factors of employment. Dr. Estwanik opined in his September 13, 2017 report that appellant's rotator cuff tear was not work related. He explained that a January 14, 2013 MRI scan confirmed no rotator cuff abnormality or relationship

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<sup>7</sup> *R.P.*, *supra* note 3; *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

<sup>8</sup> *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh, supra* note 6.

<sup>9</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); *see L.J.*, Docket No. 14-1682 (issued December 11, 2015).

<sup>10</sup> *See L.J.*, Docket No. 16-1852 (March 22, 2018).

<sup>11</sup> In light of the Board's disposition in Issue 1, Issue 2 is rendered moot.

to the December 6, 2012 employment injury. Dr. Estwanik noted that the first evidence of a small right rotator cuff tear was two years after the date of injury, which was “remote to her mechanism of injury and is remote to the objective first MRI [scan] that demonstrated an intact rotator cuff.” However, he failed to explain with sufficient rationale why the rotator cuff tear was not employment related.<sup>12</sup>

The Board notes that proceedings under FECA are not adversarial in nature, and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation. However, OWCP shares responsibility in the development of the evidence to see that justice is done. Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>13</sup> Accordingly, the Board finds that the case must be remanded to OWCP.<sup>14</sup> On remand OWCP should prepare an updated SOAF and request that Dr. Estwanik submit a supplemental report regarding whether appellant’s claim should be expanded to include additional conditions. Following this and any further development deemed necessary, it shall issue a *de novo* decision.

### CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant’s wage-loss compensation and medical benefits, effective December 1, 2017. The Board further finds that the case is not in posture for decision as to whether acceptance of the claim should be expanded to include appellant’s consequential right rotator cuff tear.

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<sup>12</sup> Cf. *Linda L. Mendenhall*, 41 ECAB 532 (1990).

<sup>13</sup> See *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Richard F. Williams*, 55 ECAB 343, 346 (2004).

<sup>14</sup> *H.T.*, Docket No. 18-0979 (issued February 4, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 8, 2018 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. This case is remanded to OWCP for further development consistent with this decision, to be followed by a *de novo* decision.

Issued: March 22, 2019  
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