

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

V.R., Appellant

and

**U.S. POSTAL SERVICE, PLEASANTBURG
STATION, Greenville, SC, Employer**

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**Docket No. 19-0758
Issued: March 16, 2021**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On February 22, 2019 appellant filed a timely appeal from November 14, 2018 and January 25, 2019 merit decisions of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 29, 2018, as she no longer had residuals or disability causally related to her accepted January 24, 2016 employment injury.

¹ Appellant timely requested oral argument before the Board. By order dated July 17, 2020, the Board exercised its discretion and denied the request as the matter could be adequately addressed based on a review of the case record. *Order Denying Oral Argument*, Docket No. 19-0758 (issued July 17, 2020).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 27, 2016 appellant, then a 39-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on January 24, 2016 she developed cervicalgia and pain in her left shoulder when she fell in a parking lot covered with ice while in the performance of duty. She stopped work on the date of injury. On February 26, 2016 OWCP accepted appellant's claim for strain of muscle, fascia, and tendon at the neck level and strain of an unspecified muscle, fascia, and tendon at the left shoulder and upper arm level, initial encounter.

On July 1, 2016 appellant returned to full-time, full-duty work. She stopped work on September 23, 2016. On October 7, 2016 appellant underwent authorized left shoulder arthroscopic distal clavicle excision (Mumford procedure), debridement of labral tear, and arthroscopic subacromial decompression of the left shoulder, which was performed by Dr. Thomas E. Baumgarten, a Board-certified orthopedic surgeon. She returned to light-duty work with restrictions on November 26, 2016 and worked in this capacity until November 30, 2016. On December 1, 2016 appellant stopped work and has not returned.

In a July 17, 2017 medical report, Dr. Justin K. Hutcheson, an attending physician Board-certified in anesthesiology and pain medicine, noted appellant's continued complaints of pain in the neck and left shoulder and arm. He discussed examination findings and advised that she had not reached maximum medical improvement (MMI) from a pain standpoint until he pursued disease-modifying treatment.

OWCP, in a letter dated August 24, 2017, requested that Dr. Baumgarten provide an opinion as to whether appellant had residuals of her accepted January 24, 2016 employment injury and authorized October 7, 2016 surgery, and whether she was capable of performing her date-of-injury rural carrier associate position. No response was received.

On September 14, 2017 OWCP expanded the acceptance of appellant's claim to include impingement syndrome and labral tear of the left shoulder.

On September 20, 2017 OWCP referred appellant, together with a statement of accepted facts, the medical record, and a list of questions, to Dr. John P. Evans, a Board-certified orthopedic surgeon, for a second opinion examination to determine the extent and degree of remaining disability due to her January 24, 2016 work-related injuries.

Dr. Evans, in an October 5, 2017 report, noted appellant's history of injury on January 24, 2016 and that her claim was accepted for neck strain, and shoulder strain, impingement, and left labral tear. He reviewed medical records and discussed findings on examination. Dr. Evans provided impressions of nonspecific left shoulder pain post-acute injury or surgery without consistent objective findings and nonspecific chronic or chronic recurring neck pain (also known as chronic sprain/strain, symptomatic degenerative disc disease, facet joint pain, chronic whiplash, etc.) with no objective findings. He advised that appellant was not totally disabled from work due to her January 24, 2016 employment injury and authorized October 7, 2016 surgery. Dr. Evans reasoned that treating providers had assessed her as being disabled from her rural carrier associate position based on her subjective self-reported complaints and not on objective findings. He opined that medical records did not indicate that appellant was a risk to herself with work activity or to

her coworkers. Dr. Evans indicated that the need to assess a patient as being unable to perform usual and customary work activities should be based upon objective examination or clinical abnormalities as opposed to self-response or subjective complaints. He noted that appellant's tolerance to pain and fatigue was a question that only she could answer, as her tolerances to pain and fatigue were not scientifically measurable and could not be the basis for restrictions/limitations. Dr. Evans maintained that there was no evidence to support her inability to perform her regular unrestricted job as of the date of his examination. Additionally, he maintained that appellant's subjective complaints outweighed objective findings. Dr. Evans explained that her activities of daily living (ADLs) and *QuickDASH* scores were unreliable as they were not consistent with his physical examination. In an accompanying work capacity evaluation dated October 5, 2017, he reiterated his opinion that appellant could perform her usual job with no restrictions.

On January 8 and February 7, 2018 OWCP requested that Dr. Evans provide a supplemental report providing whether appellant's accepted conditions had resolved.³

In a letter dated October 5, 2017, Dr. Evans advised that, based on his examination, appellant's accepted January 24, 2016 work-related neck strain and left shoulder strain, impingement syndrome, and labial tear had resolved.

By notice dated March 28, 2018, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Evans' opinion that the January 24, 2016 accepted conditions had ceased without residuals or disability. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

OWCP subsequently received an April 9, 2018 report by Dr. Hutcheson who indicated that he had performed a facet joint injection at left C3-4, C4-5, and C5-6.

OWCP also received reports dated November 27, 2017 and April 24, 2018 signed by Christina Garrett, a nurse practitioner, who examined appellant and provided assessments of unchanged cervical spondylosis and left shoulder pain.

By decision dated June 28, 2018, OWCP terminated appellant's wage-loss and medical compensation benefits effective June 29, 2018, finding that the medical evidence submitted was insufficient to outweigh Dr. Evans' opinion.

On July 6, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Thereafter, OWCP received reports and progress notes dated December 15, 2016 and January 12, 17, and 19, 2017 signed by appellant's physical therapist.

In an undated letter, Dr. Hutcheson noted that he had been treating appellant for neck pain following a fall on ice which caused or aggravated her cervical stenosis and pain in her left

³ OWCP received a February 12, 2018 job offer from the employing establishment for a modified rural carrier associate position. Appellant did not report to work.

shoulder and arm. He indicated that she had twice received facet injections which provided greater than 50 percent relief. Dr. Hutcheson related that requests for additional treatment had been denied. He maintained that, until such care was received, appellant had not reached MMI. Dr. Hutcheson concluded that she would not reach MMI until she received the necessary medical treatment to lessen her period of disability from her work-related injuries.

By decision dated November 14, 2018, an OWCP hearing representative affirmed in part and set aside in part the June 28, 2018 decision. The hearing representative found that the medical evidence submitted was insufficient to outweigh Dr. Evans' opinion that appellant no longer had employment-related disability. The hearing representative determined, however, that it was premature for OWCP to terminate appellant's medical benefits. The hearing representative explained that while Dr. Evans reported no objective findings on examination, he did not specifically address the need for continued medical treatment. The hearing representative remanded the case to OWCP to obtain an opinion from Dr. Evans' regarding appellant's need for continuing medical treatment due to her accepted employment conditions.

In a November 26, 2018 letter, OWCP again referred appellant to Dr. Evans for a second opinion examination to determine whether she had continuing residuals and the need for medical treatment due to her January 24, 2016 employment injury.

Dr. Evans, in a December 13, 2018 supplemental report, reiterated a history of the January 24, 2016 employment injury. He also noted a history of appellant's medical treatment and reviewed medical records. Dr. Evans reported findings on examination and restated his prior impressions of nonspecific left shoulder pain post-acute injury or surgery without consistent objective findings and nonspecific chronic or chronic recurring neck pain (also known as chronic sprain/strain, symptomatic degenerative disc disease, facet joint pain, chronic whiplash, etc.) with no objective findings. He advised that the current diagnoses/conditions were not causally related to the January 24, 2016 employment injury. Dr. Evans explained that appellant's present conditions/symptoms were subjective and not supported by objective findings that could relate her symptoms to the accepted work injury. He further advised that the accepted work-related conditions had resolved. Dr. Evans related that, as the accepted musculoskeletal conditions had resolved, appellant's prognosis was excellent. He concluded, that as there were no injury-related residuals, no further medical treatment was needed.

By decision dated January 25, 2019, OWCP terminated appellant's medical benefits finding that Dr. Evans' December 13, 2018 opinion was entitled to the weight of the medical evidence.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁴ 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

⁴ See *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *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).

the employment.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ 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.⁸

ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 29, 2018, as she no longer had residuals or disability causally related to her accepted January 24, 2016 employment injury.

OWCP referred appellant to Dr. Evans for a second-opinion evaluation to determine the status of her accepted conditions and her work capacity. In his October 5, 2017 and December 13, 2018 reports, Dr. Evans described her January 24, 2016 employment injury and noted that her claim was accepted for neck strain, and left shoulder strain, impingement, and labral tear. He indicated that appellant's physical examination revealed no objective findings of the accepted conditions causally related to the accepted work injury. Dr. Evans further indicated that his diagnoses of nonspecific left shoulder pain post-acute injury or surgery without consistent objective findings and nonspecific chronic or chronic recurring neck pain (also known as chronic sprain/strain, symptomatic degenerative disc disease, facet joint pain, chronic whiplash, etc.) with no objective findings were not causally related to the January 24, 2016 employment injury or authorized October 7, 2016 left shoulder surgery. He opined that the accepted work-related conditions had resolved, that appellant could return to her rural carrier associate position without restrictions, and that there was no need for further medical treatment. Dr. Evans explained that treating providers who found that she was disabled from her rural carrier associate position based their opinions on her subjective self-reported complaints and not on objective findings. Further, he explained that the medical records did not indicate that appellant was a risk to herself with work activity or to her coworkers. Dr. Evans maintained that an assessment of a patient's inability to perform usual and customary work activities should be based upon objective examination or clinical abnormalities rather than self-response or subjective complaints. Additionally, he maintained that appellant's pain and fatigue tolerances were not scientifically measurable and they could not be the basis for restrictions/limitations.

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

⁶ *K.W.*, Docket No. 19-1224 (issued November 15, 2019); see *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *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).

⁸ *K.W.*, *supra* note 6; see *A.G., id.; James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

Dr. Evans based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion. He provided a well-rationalized opinion based on medical evidence regarding the accepted conditions causally related to appellant's January 24, 2016 employment injury. Accordingly, OWCP properly relied on Dr. Evans' second opinion report in terminating her wage-loss compensation and medical benefits.⁹

The remaining evidence submitted prior to OWCP's termination of appellant's wage-loss compensation and medical benefits is insufficient to overcome the weight afforded to Dr. Evans as the second opinion physician or create a conflict in medical opinion.

Appellant submitted an undated letter from Dr. Hutcheson noting a history of the January 24, 2016 employment injury. Dr. Hutcheson also noted that she had not reached MMI because the facet injections she had twice received only provided greater than 50 percent relief from her cervical stenosis and left shoulder and arm pain and requests for additional treatment had been denied. He maintained that until such care was received appellant had not reached MMI. Dr. Hutcheson concluded that she would not reach MMI until she received the necessary medical treatment to lessen her period of disability from her work-related injuries. While he opined that appellant had continuing employment-related disability, he failed to provide any medical rationale to support his opinion. The Board has held that a medical report is of limited probative value on a given medical issue if it contains a medical opinion which is unsupported by medical rationale.¹⁰ Dr. Hutcheson's April 9, 2018 report indicated that he performed a facet joint injection at left C3-4, C4-5, and C5-6, but he did not address the issue of causation and this is of no probative value.¹¹

Appellant also submitted reports and progress notes solely signed by Ms. Garrett, a nurse practitioner, and appellant's physical therapist. These reports do not constitute competent medical evidence because neither nurse practitioners nor physical therapists are considered physicians as defined under FECA.¹² Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to compensation benefits.¹³

As the weight of the evidence establishes that appellant had no further employment-related disability or need for medical treatment, the Board finds that OWCP properly terminated her wage-loss compensation and medical benefits, effective June 29, 2018.

⁹ See *K.W., id.; N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

¹⁰ See *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *M.H.*, Docket No. 17-0210 (issued June 3, 2018).

¹¹ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² 5 U.S.C. § 8101(2) provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law," 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

¹³ *B.B.*, Docket No. 18-0732 (issued March 11, 2020).

On appeal appellant contends that she has continuing residuals of her accepted January 24, 2016 employment-related injury and authorized October 7, 2016 left shoulder arthroscopic surgery that required further medical treatment and that Dr. Evans' opinion is not entitled to the weight of the medical evidence. However, as explained above, Dr. Evans reviewed the medical record and supported his conclusion with medical rationale. Thus, the Board finds that his reports represent the weight of the evidence with regard to the termination of appellant's wage-loss compensation and medical benefits, effective June 29, 2018. As of the date of the decision on appeal, appellant had not submitted evidence establishing continuing disability on or after the effective date of the termination.

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 has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 29, 2018, as she no longer had residuals or disability causally related to her accepted January 24, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2019 and November 14, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 16, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board