

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

T.M., Appellant	)	
	)	
and	)	Docket No. 19-1068
	)	Issued: March 30, 2021
U.S. POSTAL SERVICE, POST OFFICE, Avon Lake, OH, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
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 April 15, 2019 appellant, through counsel, filed a timely appeal from a March 20, 2019 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 over the merits of this case.

**ISSUES**

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 30, 2018, as she no longer had

---

<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.*

residuals or disability causally related to her accepted employment-related conditions; and (2) whether appellant has met her burden of proof to establish continuing disability on or after July 30, 2018 due to her accepted employment-related conditions.

### **FACTUAL HISTORY**

On October 14, 2016 appellant, then a 51-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 12, 2016 she sustained injuries to her left arm and back when her foot struck something on the ground causing her to fall while in the performance of duty. She stopped work on October 14, 2016. OWCP accepted the claim for sprains of the left shoulder joint, thorax, and lumbar spine. It paid appellant wage-loss compensation on the supplemental rolls, effective November 29, 2016, and on the periodic rolls, effective April 2, 2017.

Appellant received care for her left shoulder, lumbar, and thorax sprains from Dr. Robert J. Berkowitz, a Board-certified orthopedic surgeon, and Dr. Daniel J. Zanotti, a Board-certified orthopedic surgeon and orthopedic sports medicine physician. She also received pain management treatment from Dr. Bharat Shah, a Board-certified internist, for left shoulder, thoracic, and lumbar pain.

On July 21, 2017 OWCP referred appellant for a second opinion evaluation with Dr. William R. Bohl, a Board-certified orthopedic surgeon, to determine the status of her accepted employment-related conditions.

In an August 9, 2017 report, Dr. Bohl noted appellant's history of injury and treatment and summarized her diagnostic test findings. Appellant's physical examination revealed left shoulder tenderness, some left upper trapezius area tenderness, no rotator muscles weakness, and lower lumbar tenderness at the sciatic notches and sacroiliac joints. Dr. Bohl diagnosed left shoulder acromioclavicular joint and rotator cuff tendons sprain, which he found aggravated appellant's preexisting left acromioclavicular joint arthritis, mild left shoulder impingement syndrome with rotator cuff tendon tendinitis, and lower back sprain. He also diagnosed lower back mild degenerative disc disease with lower facet joint arthritis and possible right sacroiliac sprain, which he noted were not accepted conditions. Dr. Bohl opined that appellant's left shoulder and lumbar symptoms appeared to be due to an aggravation of preexisting conditions by the employment injury. As to appellant's work capacity, he concluded that she would have difficulty performing the duties of a city carrier as she was unable to carry a heavy bag on her left shoulder and that walking long distances aggravated her lower back symptoms.

A November 13, 2017 functional capacity evaluation (FCE) determined that appellant was capable of work with restrictions.

In a December 4, 2017 report, Dr. Shah examined appellant and reviewed the November 13, 2017 FCE. He reported diagnoses of lumbar spine ligaments sprain. Based on his review of the FCE, Dr. Shah opined that appellant was capable of working and had permanent restrictions of up to 7 pounds of frequent lifting, up to 15 pounds of occasional lifting, and occasional sitting and walking.

On December 29, 2017 appellant accepted a modified job offer working four hours per day with restrictions and returned to part-time employment on December 3, 2017.

On April 2, 2018 OWCP again referred appellant for a second opinion evaluation with Dr. Bohl. An attached statement of accepted facts (SOAF) noted appellant's job description and physical requirements, that the claim had been accepted for left shoulder, thorax, and lumber sprains, that she had returned to four hours of work with restrictions on December 30, 2017, and that she was currently working four to six hours per day. OWCP noted that Dr. Bohl had mentioned in his August 9, 2017 report that appellant had other conditions, which were not accepted. It asked him whether she currently had objective findings of other conditions related to the work injury.

In his May 9, 2018 report, Dr. Bohl responded that appellant's left shoulder capsulitis might be due to the accepted employment injury, causing her to favor that shoulder, and, therefore, allowing it to stiffen. He further explained that she had objective findings including limitation of motion in the left shoulder which was consistent with adhesive capsulitis, which may be causally related to her October 12, 2016 work injury. In response to the question of whether appellant had residuals of the accepted work-related condition and/or any additional conditions related to the employment injury, Dr. Bohl explained that appellant continued to have loss of motion in the left shoulder from adhesive capsulitis, and while with normal treatment the prognosis for this condition would be good, appellant had not received medical treatment to resolve this condition. He also provided work restrictions as he determined that appellant was unable to return to her letter carrier position.

On May 10, 2018 OWCP requested that Dr. Bohl address whether appellant's adhesive capsulitis was related to her employment injury. It also noted that he had related that she continued to have restrictions due to nonwork-related preexisting degenerative disc disease and probable bilateral sacroiliitis along with adhesive capsulitis. OWCP questioned Dr. Bohl as to whether appellant needed work restrictions due to her accepted sprain conditions since they had resolved.

In a May 23, 2018<sup>3</sup> supplemental report, Dr. Bohl opined that he could not say with certainty whether appellant's left shoulder adhesive capsulitis was caused or aggravated by the accepted October 12, 2016 employment injury. He indicated that the adhesive capsulitis could be due to cervical radiculopathy, acromioclavicular joint arthritis or that it was possible the condition had originated from the employment injury. Dr. Bohl opined that the accepted sprains had resolved and no work restrictions were required for those conditions.

In a June 19, 2018 report, Dr. Shah detailed appellant's subjective complaints and medical history and performed a physical examination. Examination findings included bilateral facet tenderness at L4-5 and L5-S1, pain with lumbar flexion and extension and bilateral flexion, upper and lower extremity strength, sensation, and reflexes were within normal limit bilateral, and muscle motor distribution was within normal limits. Dr. Shah diagnosed lumbar ligament sprain, lumbar spondylosis without radiculopathy or myelopathy, and lumbosacral spondylosis without radiculopathy or myelopathy. He noted that appellant was working four hours per day in straight mail delivery. Dr. Shah agreed with Dr. Bohl that the accepted contusion and sprains had resolved

---

<sup>3</sup> The date of the report was mistakenly noted as May 23, 2017 instead of May 23, 2018.

and that her current symptoms were due to degenerative disc disease and shoulder adhesive capsulitis.

On June 21, 2018 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits, as the evidence of record established that she no longer had employment-related residuals or disability due to her accepted work-related conditions. It afforded her 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination of benefits.

In a July 24, 2018 report, Dr. Shah noted that appellant's examination findings and diagnoses were unchanged from his June 19, 2018 report. He noted that appellant was doing well working four hours per day with restriction and that he would increase her hours to six per day.

By decision dated July 30, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits effective that same date. It found that the opinions of Dr. Bohl and Dr. Shah established that appellant had no further residuals or disability due to her accepted left shoulder, thoracic, and lumbar sprains.

In an August 7, 2018 report, Dr. Shah reiterated that appellant was capable of working six hours per day with restrictions.

In a letter dated August 7, 2018, counsel requested a telephonic hearing before an OWCP hearing representative. The hearing was held on January 8, 2019.

By decision dated March 20, 2019, OWCP's hearing representative affirmed the July 30, 2018 decision, terminating appellant's wage-loss compensation and medical benefits.

### **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>4</sup> After it has determined that an employee has a 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.<sup>7</sup> To terminate authorization for medical treatment, OWCP must

---

<sup>4</sup> *R.S.*, Docket No. 19-0552 (issued September 6, 2019); *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

<sup>5</sup> *G.T.*, Docket No. 18-01302 (issued October 22, 2019); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

<sup>6</sup> *G.H.*, Docket No. 18-0414 (issued November 14, 2018); *see R.P.*, Docket No. 17-1133 (issued January 18, 2018).

<sup>7</sup> *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>8</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 6, 2017, as she no longer had disability or residuals due to her accepted October 12, 2016 employment-related conditions.

OWCP accepted that appellant sustained left shoulder joint, thorax, and lumbar spine sprains on October 12, 2016. It indicated that it was terminating her wage-loss compensation and medical benefits as the May 9 and 23, 2018 reports from Dr. Bohl, an OWCP referral physician, constituted the weight of the medical evidence and established that appellant had no further disability or need for medical treatment due to her left shoulder joint, thorax, and lumbar sprains.

OWCP referred appellant to Dr. Bohl for a second opinion examination to determine the status of her accepted employment-related conditions. In his initial August 9, 2017 report, Dr. Bohl diagnosed left shoulder acromioclavicular joint and rotator cuff tendons sprain, which he found aggravated appellant's preexisting left acromioclavicular joint arthritis, mild left shoulder impingement syndrome with rotator cuff tendon tendinitis, and lower back sprain. He opined that appellant's left shoulder and lumbar symptoms appeared to be due to an aggravation of preexisting conditions by the employment injury. After receipt of Dr. Bohl's August 9, 2017 report, OWCP made no findings and did not further develop the record to determine whether acceptance of appellant's claim should be expanded to include the additional conditions, including aggravation of appellant's preexisting left acromioclavicular joint arthritis and left shoulder impingement syndrome with rotator cuff tendon tendinitis noted by Dr. Bohl.

On April 2, 2018 OWCP again referred appellant to Dr. Bohl for another second opinion evaluation. It noted that Dr. Bohl had mentioned in his August 9, 2017 report that she had other conditions which were not accepted. OWCP asked Dr. Bohl whether appellant currently had objective findings of other conditions related to the work injury. Dr. Bohl opined in his May 9, 2018 report that her left shoulder capsulitis might be due to the accepted employment injury, causing her to favor that shoulder, and thereby allowing it to stiffen. He further explained that appellant had objective findings including limitation of motion in the left shoulder which was consistent with adhesive capsulitis which may be causally related to her October 12, 2016 work injury. In response to the question of whether appellant had residuals of the accepted work-related condition and/or any additional condition related to the employment injury, Dr. Bohl explained that appellant continued to have loss of motion in the left shoulder from adhesive capsulitis, and she had not received medical treatment to resolve this condition. On May 10, 2018 OWCP wrote to Dr. Bohl and requested that he address again whether appellant's adhesive capsulitis was related to her employment injury. It also noted that Dr. Bohl had related that appellant continued to have restrictions due to nonwork-related preexisting degenerative disc disease and probable bilateral sacroiliitis along with adhesive capsulitis. OWCP questioned Dr. Bohl as to whether it was his opinion that appellant needed no work restrictions due to her accepted sprain conditions since they

---

<sup>8</sup> *A.M.*, Docket No. 18-1243 (issued October 7, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

had resolved. In a May 23, 2018 supplemental report, Dr. Bohl opined that the diagnosed adhesive capsulitis could be due to appellant's cervical radiculopathy, acromioclavicular joint arthritis, and it could also be possible that it originated from her original work injury. He noted that appellant's shoulder sprain would have normally resolved a long time ago, and that appellant's capsulitis at this point, in view of her other conditions, could not with certainty be attributed to her work injury as its most likely cause.

The Board finds that OWCP did not properly terminate appellant's wage-loss compensation and medical benefits as it did not properly develop, make findings, and issue a final decision regarding expansion of appellant's claim. Dr. Bohl related, in his initial August 9, 2017 report, that appellant's accepted left shoulder sprain aggravated her preexisting left acromioclavicular joint arthritis, mild left shoulder impingement syndrome with rotator cuff tendon tendinitis, and lower back sprain. While OWCP again referred appellant to Dr. Bohl, it did not make any findings regarding expansion of the claim after he opined in his May 9, 2018 report that appellant's left shoulder capsulitis might be due to the accepted employment injury, and then upon further inquiry from OWCP opined in his May 23, 2018 report that appellant's diagnosed adhesive capsulitis could be due to appellant's cervical radiculopathy, or her acromioclavicular joint arthritis, or it could also have possibly originated from her original work injury of shoulder sprain.

Once OWCP undertakes development of the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.<sup>9</sup> It failed to fully develop the issue of claim expansion to determine whether it should expand acceptance of the claim to include additional conditions diagnosed by Dr. Bohl, an OWCP referral physician, and whether, if established these conditions resulted in continuing disability from employment or the need for medical treatment.<sup>10</sup>

For the above-stated reasons, as OWCP has not resolved the issue of whether the acceptance of appellant's claim should be expanded to include additional conditions, it has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.<sup>11</sup>

### **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 6, 2017.<sup>12</sup>

---

<sup>9</sup> See *B.W.*, Docket No. 20-1033 (issued November 30, 2020); *R.B.* Docket No. 20-0109 (issued June 25, 2020).

<sup>10</sup> See *B.W.*, *id.*; *J.T.*, Docket No. 19-1723 (issued August 24, 2020).

<sup>11</sup> See *B.W.*, *id.*

<sup>12</sup> In light of the Board's disposition of issue 1, the Board finds that issue 2 is moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 20, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 30, 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