United States Department of Labor
Employees Compensation Appeals Board

Y.J., Appellant	)	
and	)	**Docket No. 20-1337**
	)	**Issued: February 7, 2022**
U.S. POSTAL SERVICE, CARDISS COLLINS PROCESSING & DISTRIBUTION CENTER, Chicago, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 26, 2020 appellant, through counsel, filed a timely appeal from a May 11, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

[1] 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.

Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's medical benefits, effective July 2, 2019, finding that she no longer had residuals causally related to her accepted bilateral shoulder and hand conditions; and (2) whether appellant has met her burden of proof to establish continuing residuals on or after July 2, 2019.

FACTUAL HISTORY

On September 24, 2015 appellant, then a 58-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed intense pain and irritation in her hands, wrists, elbows, and shoulders due to factors of her federal employment including repetitively using her hands and arms while working on flat machines for four and a half years at work. She noted that she first became aware of her claimed condition on September 15, 2015 and realized its relationship to her federal employment on September 21, 2015. Appellant stopped work on September 28, 2015 and returned on October 3, 2015. OWCP accepted her claim for bilateral shoulder articular cartilage disorder and bilateral hand synovitis and tenosynovitis.

On October 7, 2016 appellant underwent OWCP-authorized right shoulder arthroscopy and stopped work. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective October 5, 2016 and placed her on the periodic rolls, effective March 5, 2017. On August 11, 2017 appellant returned to full-time, limited-duty work. She continued to receive medical treatment and undergo physical therapy treatment for her bilateral shoulder and hand conditions.

On March 7, 2018 OWCP referred appellant, along with a statement of accepted facts, a copy of the case record, and a series of questions, to Dr. Steven Chandler, an osteopath specializing in orthopedic surgery, for a second opinion evaluation regarding the status of her employment-related conditions. In a June 20, 2018 report, Dr. Chandler reviewed her history of injury and noted her current complaints of pain and weakness in her hands. Upon examination of appellant's shoulders, he observed tenderness to the proximal biceps tendon and acromioclavicular (AC) joint. Examination of her hands revealed decreased range of motion (ROM) of the wrists. Dr. Chandler diagnosed bilateral shoulder bursitis, bilateral shoulder impingement syndrome, bilateral shoulder tendinitis and/or tenosynovitis, bilateral carpal tunnel syndrome, and bilateral de Quervain's disease/tenosynovitis.

Dr. Chandler opined that appellant's right shoulder impingement and rotator cuff tendinitis had resolved after her right shoulder arthroscopy and when she was released back to work on

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that, following the May 11, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

March 10, 2017. He further opined that she still had residuals of her left shoulder condition and noted that examination findings had shown positive Neer's examination and tenderness to palpation over the subacromial space. Regarding appellant's bilateral hand condition, Dr. Chandler reported that diagnostic testing showed that her bilateral wrist tenosynovitis condition had resolved as of February 13, 2017, when appellant was released back to work. Dr. Chandler concluded that she no longer needed therapy for her accepted conditions.

In a July 31, 2018 progress report, Dr. William Payne, a Board-certified orthopedic surgeon, reported that appellant was seen for follow-up of right shoulder pain. He noted right shoulder examination findings of tenderness in the AC joint and abnormal ROM. Dr. Payne diagnosed status post right shoulder subacromial decompression. He recommended work conditioning or physical therapy. Dr. Payne also completed occupational health injury notes dated July 31 and September 18, 2018, which indicated that appellant could return to work with restrictions.

In a supplemental report dated August 20, 2018, Dr. Chandler clarified that appellant's right shoulder conditions had resolved as of August 11, 2017 when she was released to full duty. He also explained that his recommendation that she use splints was more prophylactic so that her work duties did not aggravate her bilateral wrist condition.

In a January 10, 2019 prescription therapy report, Dr. David Barnes, an osteopath who specializes in family medicine, noted appellant's accepted conditions. He explained that she had a few "flare-up" episodes since her last evaluation, but continued to show improvement. Upon physical examination, Dr. Barnes observed muscle spasm and tenderness in appellant's bilateral thenar pads and hypothenar pads and wrists and restricted ROM. He requested authorization for physical and occupational therapy to treat her bilateral hand conditions. Dr. Barnes also completed duty status reports (Form CA-17) dated August 16, 2018 through February 7, 2019, wherein he opined that appellant could return to work with restrictions.

OWCP subsequently determined that a conflict in medical opinion existed between Dr. Barnes, appellant's treating physician, and Dr. Chandler, OWCP's second opinion medical examiner, with regard to the status of her accepted conditions. As such, it referred her to Dr. Michael Cohen, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict.

In a February 28, 2019 report, Dr. Cohen indicated that he reviewed appellant's records and noted that her claim was accepted for bilateral shoulder articular cartilage disorder and bilateral hand tenosynovitis and tendinitis. He noted that diagnostic imaging of her right hand in 2016[4] showed significant carpometacarpal (CMC) arthritis and diagnostic imaging of her left hand in 2017[5] showed modest wrist and CMC arthritis. Dr. Cohen reported appellant's complaints of bilateral shoulder pain and pain in the area of the CMC joints of her hands. Upon physical

[4] A December 28, 2016 right hand magnetic resonance imaging (MRI) scan demonstrated severe osteoarthritis of the first CMC joint with full-thickness cartilage loss and mild degenerative changes at the metacarpophalangeal and interphalangeal joints.

[5] A January 30, 2017 left hand MRI scan revealed mild-to-moderate degenerative change in the left wrist, first CMC joint, and first metacarpophalangeal joint.

examination of her hands and wrists, he observed full ROM, no tenderness, and negative Finkelstein's tests. Examination of appellant's bilateral shoulders revealed full ROM and rotator cuff strength. Dr. Cohen opined that appellant had no residuals of her accepted bilateral shoulder conditions. He reported that examination of her shoulders demonstrated full ROM with the only positive finding of tenderness over the biceps tendon. Dr. Cohen also opined that appellant's bilateral de Quervain's tenosynovitis had resolved. He noted that she had negative Finkelstein's test on both wrists and no tenderness over the first dorsal compartment on both wrists. Dr. Cohen opined that appellant's current symptoms were related to her underlying arthritis condition, and not related to her employment. He reported that physical therapy would not likely improve her arthritic symptoms. Dr. Cohen completed a work capacity evaluation (Form OWCP-5c), which indicated that appellant could work full time with restrictions.

On March 19, 2019 OWCP issued a notice proposing to terminate appellant's medical benefits because her accepted bilateral shoulder and hand conditions had resolved. It found that the special weight of medical evidence rested with the February 28, 2019 medical report of Dr. Cohen, OWCP's impartial medical examiner (IME), who found that she no longer had any residuals causally related to her accepted bilateral upper extremity conditions. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

In an April 15, 2019 letter, appellant noted her disagreement with the proposed termination.

Appellant submitted additional evidence. In progress reports and occupational health injury notes dated March 12 and April 9, 2019, Dr. Payne noted that she was seen for follow-up evaluation of her right shoulder and complaints of left shoulder pain. Upon examination of the right shoulder, he observed abnormal ROM on passive external rotation and normal sensation. Examination of appellant's left shoulder revealed tenderness in the AC joint and abnormal abduction and forward flexion. Diagnostic testing, including a Hawkins impingement test, was positive. Dr. Payne diagnosed status post right shoulder arthroscopy and repair. He indicated that appellant could work with restrictions.

In an April 4, 2019 report, Dr. Barnes noted his disagreement with an OWCP examiner's opinion that appellant only suffered from arthritis in her thumb because arthritis would not present with the objective findings that he had seen. He noted diagnoses of bilateral shoulder other articular cartilage disorder and bilateral hand synovitis and tenosynovitis. Dr. Barnes indicated that it was medically necessary to treat these conditions with continued medical treatment and therapy. He also provided a motor grip strength testing report.

On April 9, 2019 appellant underwent a bilateral shoulder x-ray examination, which showed "unremarkable bilateral shoulder x-ray."

In an April 17, 2019 report, Dr. Barnes agreed that appellant suffered from arthritis, but explained that she also continued to have objective findings and symptoms of her accepted bilateral hand tenosynovitis condition. He reported that findings from his physical evaluation and computerized ROM and grip strength and motor testing revealed that she had limited ROM in her wrists, as well as weakness of the wrist and hand muscles. Dr. Barnes indicated that if appellant only suffered from arthritis, she would not have those examination findings. He explained that

arthritis was also typically found within synovitis and tenosynovitis patients. Dr. Barnes concluded that appellant continued to suffer from her accepted bilateral hand condition.

In an April 30, 2019 addendum report, Dr. Cohen recounted that he had reviewed Dr. Barnes' additional reports, including the motor grip and strength testing report, and noted his disagreement with Dr. Barnes' opinion. He explained that CMC arthritis would also result in decreased ROM of the hand, wrist, and thumb, as well as decreased strength and mobility. Dr. Cohen reported that physical evaluation of appellant's hands revealed no findings of tenosynovitis, including no tenderness over the first dorsal compartment of both wrists and negative Finkelstein's tests. He confirmed that his opinion from his initial February 28, 2019 impartial medical report remained unchanged.

A May 3, 2019 left shoulder MRI scan showed partial thickness tear of the distal anterior supraspinatus tendon, infraspinatus tendinosis, and mild degenerative changes of the glenohumeral and AC joints.

In a May 9, 2019 letter, appellant contended that the medical evidence of record had demonstrated that her pain resulted from a tear in her left shoulder and not from arthritis. She also alleged that she continued to experience symptoms in her hands from her accepted bilateral tenosynovitis condition. Appellant indicated that she needed to undergo left shoulder surgery to repair her left shoulder tear and continued physical therapy treatment for her bilateral hand condition.

In a May 21, 2019 occupational health injury report, Dr. Payne noted a diagnosis of left shoulder pain and indicated that appellant could return to work with restrictions.

In a June 6, 2019 Form CA-17 report, Dr. Barnes indicated that appellant could return to work with restrictions of no pushing or pulling and taking a 10-minute break every hour.

OWCP also received physical therapy and chiropractic treatment notes dated from August 29, 2018 through May 13, 2019.

By decision dated July 2, 2019, OWCP finalized the proposed termination of appellant's medical benefits, effective that date. It found that the special weight of medical evidence rested with Dr. Cohen, the IME, who had determined in February 28 and April 30, 2019 reports, that she did not have residuals due to her accepted bilateral shoulder and hand conditions.

On March 5, 2020 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In reports dated July 2, 2019 through February 18, 2020, Dr. Payne noted diagnoses of left shoulder pain, left shoulder partial thickness tear, and status post right shoulder arthroscopy. He indicated that appellant could work with restrictions.

OWCP received an August 8, 2019 Form CA-17 report by Dr. Barnes, who indicated that appellant could return to work with restrictions.

In an October 8, 2019 progress note, Dr. Payne reported appellant's complaints of right and left shoulder pain aggravated by pushing, pulling, lifting, and repetitive activities at or above shoulder height. He noted right shoulder examination findings of tenderness in the AC right joint and abnormal abduction, flexion, and external rotation. Examination of appellant's left shoulder revealed normal ROM. Dr. Payne diagnosed status post right shoulder arthroscopy and left shoulder partial thickness tear.

On October 10, 2019 Dr. Payne submitted a request for authorization for left shoulder arthroscopy.

In a November 21, 2019 prescription for therapy note, Dr. Barnes noted that appellant was doing well with therapy, but still reported difficulty with strength, grip strength, and ROM. He reiterated his disagreement with the opinion that her symptoms were due only to her CMC arthritis and explained that CMC arthritis would not present with all the objective findings in his examination and computerized testing. Dr. Barnes opined that additional medical treatment was needed to treat appellant's bilateral hand condition and to guarantee that her condition would not deteriorate.

In a January 29, 2020 narrative report, Dr. Payne noted that appellant injured her shoulders and hands due to repetitive movement at work. He reported that she currently complained of bilateral hand pain, worse on the right, intermittent numbness, tingling, and weakness and bilateral shoulder pain. Dr. Payne discussed the medical treatment that appellant had received and noted that after several evaluations and diagnostic testing, he assessed that she had right shoulder rotator cuff tear, left shoulder impingement with partial tear, bilateral CMC arthritis, bilateral shoulder pain, and bilateral de Quervain's tenosynovitis. He opined that the injuries that she sustained were a result of repetitive use of the work-related injury while working at the employing establishment. Dr. Payne indicated that appellant would need surgery on her left shoulder and additional physical therapy.

By decision dated May 11, 2020, OWCP denied modification of the July 2, 2019 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of benefits.[6] It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[7] OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[8]

[6] *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

[7] *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see also I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

[8] *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[9] To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.[10]

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or IME) who shall make an examination.[11] For a conflict to arise the opposing physicians' viewpoints must be of "virtually equal weight and rationale."[12] When OWCP has referred the case 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.[13]

ANALYSIS -- ISSUE 1

The Board finds that OWCP did not meet its burden of proof to terminate appellant's medical benefits, effective July 2, 2019.

OWCP improperly determined that a conflict in the medical opinion evidence existed between Dr. Barnes, appellant's treating physician and Dr. Chandler, OWCP's second opinion examiner, regarding whether her accepted bilateral shoulder and hand conditions had resolved. In his June 20 and August 20, 2018 reports, Dr. Chandler reported her complaints of pain and weakness in her hands. He noted physical examination findings of tenderness to the proximal biceps tendon and AC joint of appellant's shoulders and decreased ROM of her wrists. Dr. Chandler diagnosed bilateral shoulder bursitis, bilateral shoulder impingement syndrome, bilateral shoulder tendinitis and/or tenosynovitis, bilateral carpal tunnel syndrome, and bilateral de Quervain's disease/tenosynovitis. He opined that appellant's right shoulder condition had resolved after her right shoulder arthroscopy and her release to work on August 11, 2017, but that she continued to suffer residuals of her left shoulder condition. Dr. Chandler also indicated that her bilateral wrist condition had resolved when she was released back to work on February 13, 2017.

As noted above, for a conflict to arise the opposing physicians' viewpoints must be of virtually equal weight and rationale.[14] In this case, the Board finds, however, that Dr. Chandler

[9] *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

[10] *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

[11] 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

[12] *H.B.*, Docket No. 19-0926 (issued September 10, 2020); *C.H.*, Docket No. 18-1065 (issued November 29, 2018); *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

[13] *S.S.*, Docket No. 19-0766 (issued December 13, 2019); *W.M.*, Docket No. 18-0957 (issued October 15, 2018); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

[14] *Supra* note 12.

failed to provide sufficient explanation as to why, despite diminished examination findings, appellant's accepted right shoulder and hand conditions had resolved.[15] Dr. Chandler relied on the fact that she was released back to work. The Board has held that a report is of limited probative value regarding a given medical matter if a physician does not provide medical rationale explaining his or her opinion on that matter.[16] Therefore, the Board finds that Dr. Chandler's opinion was not of equal weight and was, thus, insufficient to create a conflict with Dr. Barnes.[17] Furthermore, Dr. Chandler determined that appellant still had residuals of her left shoulder condition and, thus, there was no conflict in medical evidence regarding her left shoulder condition. As no true conflict existed in the medical evidence at the time of the referral to Dr. Cohen, the Board finds that his report may not be afforded the special weight of an IME and should be considered for its own intrinsic value.[18] The referral to Dr. Cohen is therefore considered to be a second opinion evaluation.[19]

In a February 28, 2019 report, Dr. Cohen reviewed appellant's records and noted that appellant's claim was accepted for bilateral shoulder articular cartilage disorder and bilateral hand tenosynovitis and tendinitis. He noted that diagnostic imaging of her bilateral hands had revealed wrist and CMC arthritis. Dr. Cohen reported bilateral hand examination findings of full ROM, no tenderness, and negative Finkelstein's tests. Examination of appellant's bilateral shoulders revealed full ROM and rotator cuff strength. Dr. Cohen opined that her accepted bilateral shoulder and hand conditions had resolved as she no longer had examination findings to support her conditions. He opined that appellant's current symptoms were related to her underlying arthritis condition, and not related to her employment. Dr. Cohen reported that she could continue to work full time with restrictions.

Appellant's treating physician, Dr. Barnes, however, submitted numerous reports wherein he noted that appellant continued to suffer residuals of her accepted bilateral shoulder and hand conditions that required medical treatment. In a January 10, 2019 report, he indicated that she continued to show muscle spasm and tenderness in her bilateral thenar pads and hypothenar pads and wrists. Dr. Barnes requested authorization for physical and occupational therapy to treat appellant's bilateral hand conditions. In an April 4, 2019 report and April 17, 2019 letter, he expressed his disagreement with an OWCP examiner's opinion that appellant only suffered from arthritis. Dr. Barnes noted that examination findings still showed deficits in her hand and shoulders. He reported diagnoses of bilateral shoulder other articular cartilage disorder and

[15] *See P.E.*, Docket No. 19-0837 (issued October 20, 2020); *see also F.R.*, Docket No. 17-1711 (issued September 6, 2018).

[16] *L.G.*, Docket No. 19-0142 (issued August 8, 2019); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

[17] *Supra* note 13; *see also R.B.*, Docket No. 20-0109 (issued June 25, 2020) (the Board found that a second-opinion examiner's report was of limited probative value and insufficient to create a conflict in medical opinion with the claimant's treating physician).

[18] *See R.B.*, *id.*; *see also F.R.*, *supra* note 15.

[19] *See M.G.*, Docket No. 19-1627 (issued April 17, 2020); *S.M.*, Docket No. 19-0397 (issued August 7, 2019) (the Board found that at the time of the referral for an impartial medical examination there was no conflict in medical opinion evidence; therefore, the referral was for a second opinion examination); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

bilateral hand synovitis and tenosynovitis. Dr. Barnes indicated that it was medically necessary to treat these conditions with continued medical treatment and therapy.

In an April 30, 2019 addendum report, Dr. Cohen noted that he had reviewed Dr. Barnes' additional reports, and disagreed with his opinion. He reiterated that physical evaluation of appellant's bilateral hands revealed no findings of tenosynovitis, including no tenderness over the first dorsal compartment of both wrists and negative Finkelstein's tests. Dr. Cohen confirmed that his opinion from his initial February 28, 2019 impartial medical report remained unchanged.

The Board therefore finds that the medical reports of Dr. Cohen and Dr. Barnes are of virtually equal weight and rationale, and therefore an unresolved conflict in medical opinion now exists between Dr. Barnes and Dr. Cohen regarding whether appellant's accepted bilateral shoulder and hand conditions had resolved. It is well established that when there exist opposing medical reports of virtually equal weight and rationale, the case should be referred to an IME for the purpose of resolving the conflict.[20] As a conflict in medical evidence regarding whether appellant's accepted bilateral shoulder and hand conditions had resolved remains prior to July 2, 2019, the Board finds that OWCP has not met its burden of proof to terminate her medical benefits.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's medical benefits effective July 2, 2019.[21]

[20] *Supra* notes 11 and 13.

[21] In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the May 11, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: February 7, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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