

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

K.R., Appellant	)	
	)	
and	)	<b>Docket No. 21-0152</b>
	)	<b>Issued: February 16, 2022</b>
	)	
U.S. POSTAL SERVICE, BULK MAIL	)	
CENTER, Richmond, CA, Employer	)	
	)	

*Appearances:*  
Sylvia R. Johnson, for the appellant<sup>1</sup>  
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 November 12, 2020 appellant, through his representative, filed a timely appeal from an August 13, 2020 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 this case.<sup>3</sup>

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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.*

<sup>3</sup> The Board notes that, following the August 13, 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.*

## ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 16, 2020; (2) whether appellant has met his burden of proof to establish continuing disability or residuals on or after April 16, 2020, causally related to the accepted June 3, 1994 employment injury.

## FACTUAL HISTORY

This case has previously been before the Board on different issues.<sup>4</sup> The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On June 14, 1994 appellant, then a 35-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on June 3, 1994 he injured his right shoulder while in the performance of duty. OWCP accepted the claim for rotator cuff syndrome, allied disorders, and rotator cuff tears of the right shoulder. It assigned that claim OWCP File No. xxxxxx077. On September 14, 1995 appellant underwent authorized repair of a torn right rotator cuff tear. He returned to modified-duty work on October 27, 1995 and was injured at work the next day, October 28, 1995.<sup>5</sup> On November 21, 1999 appellant returned to modified-duty work with permanent restrictions. He stopped work on August 13, 2007 and underwent an OWCP-authorized repair of a torn right rotator cuff tear on January 18, 2008. Appellant did not return to work. OWCP paid him wage-loss compensation on the periodic rolls as of March 16, 2008.

On September 18, 2019 OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record, to Dr. John H. Welborn, Jr., a Board-certified orthopedic surgeon, for a second opinion examination to determine the status of appellant's residuals and disability due to his accepted June 3, 1994 employment injury.

OWCP received an October 1, 2019 visit note from Dr. Maria V. Bulatov, a Board-certified physiatrist. Dr. Bulatov noted that appellant sustained a work-related right shoulder injury on June 3, 1994. She performed a physical examination of the right and left shoulders, reviewed the magnetic resonance imaging (MRI) scan results, and provided impressions of right rotator cuff arthropathy and right biceps tendinitis. Dr. Bulatov advised that appellant was unable to return to his regular work duties due to his persistent right shoulder pain. She addressed her treatment plan.

In an October 21, 2019 medical report, Dr. Welborn noted appellant's history of injury in 1994 and 1995 and his review of the SOAF and medical evidence of record. He also noted that appellant had complaints of right shoulder pain and physical limitations. On physical examination of the right shoulder, Dr. Welborn found tenderness to touch. He reported no swelling or erythema,

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<sup>4</sup> Docket No. 09-28 (issued September 16, 2009), *petition for recon. denied*, Docket No. 09-28 (issued June 10, 2010); Docket No. 11-1746 (issued August 16, 2012).

<sup>5</sup> Appellant subsequently filed a Form CA-1 for a right shoulder injury, which OWCP accepted for right shoulder strain. OWCP assigned that claim OWCP File No. xxxxxx102. OWCP administratively combined OWCP File Nos. xxxxxx077 and xxxxxx102, with the latter serving as the master file.

a negative impingement test, two scars in the anterior lateral shoulder, and very large muscles in the shoulder and arm with no atrophy. Dr. Welborn recorded range of motion measurements of 170 degrees each of flexion and abduction, 80 degrees of external rotation, and 70 degrees of internal rotation. He noted as part of his assessment that rotator cuff tear had been added as an update to the problem list for the current evaluation. Dr. Welborn advised that appellant no longer continued to suffer from objective residuals of his accepted right cuff syndrome, but he had subjective pain that did not correlate with his objective findings. He further advised that appellant could return to full-duty work with no right shoulder restrictions. Dr. Welborn noted that appellant claimed that he was unable to perform full-duty work due to back, hip, neck, and knee pain and that he was restricted due to his pain. He determined that appellant could lift up to 20 pounds, and sit at a desk and lift up to 10 pounds and answer telephones without taking breaks. Dr. Welborn concluded that appellant did not require any further right shoulder medical treatment. In an accompanying work capacity evaluation (Form OWCP-5c) of even date, he indicated that appellant was unable to perform his usual work due to non-industrial back and neck pain, but he could work eight hours per day with restrictions in a sedentary light position.

By notice dated November 19, 2019, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits based on Dr. Welborn's opinion that the June 3, 1994 accepted conditions had ceased without residuals or disability. It afforded him 30 days to submit additional evidence or argument challenging the proposed termination.

OWCP subsequently received an additional visit note dated December 4, 2019, wherein Dr. Bulatov reiterated her prior impressions of right rotator cuff arthropathy and right biceps tendinitis. Additionally, she assessed depression, not otherwise specified. Dr. Bulatov noted that appellant continued to experience chronic right shoulder pain that was aggravated by cold weather and by simple activities of daily living (ADLs) that required reaching up, reaching back, and lifting. She also showed evidence of depression with decreased mood, social withdrawal, and a low energy level. Appellant denied having any specific suicidal plans. Dr. Bulatov indicated that he was previously evaluated by a psychologist/psychiatrist at a Department of Veterans Affairs (VA) hospital, but was no longer receiving treatment. She addressed her treatment plan for appellant's right and left shoulder conditions. Dr. Bulatov also recommended a psychiatric evaluation of his depression, which she advised was related to his chronic pain and limited functional status.

In a January 28, 2020 visit note, Dr. Richard A. Nolan, a Board-certified orthopedic surgeon, performed an examination and provided impressions of right rotator cuff arthropathy, right biceps tendinitis, and depression. He provided restrictions related to appellant's right shoulder. Dr. Nolan advised that his chronic pain and loss of function resulted in anxiety and depression secondary to his inability to maintain an adequate level of activity that would allow him to return to his work activities. He provided his treatment plan for appellant's right and left shoulder and emotional conditions.

OWCP, by decision dated April 16, 2020, terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical evidence was represented by the report of Dr. Welborn.

On April 21, 2020 appellant, through his representative, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received additional reports by Dr. Nolan. In a May 13, 2020 visit note, Dr. Nolan reiterated his prior assessments of right rotator cuff arthropathy, right biceps tendinitis, and depression, and appellant's work restrictions.

In a June 9, 2020 Form OWCP-5c, Dr. Nolan indicated that appellant was totally disabled from work and listed his permanent restrictions. He advised that his chronic pain syndrome, anxiety, and depression should be considered in identifying a position for him.

In a June 2, 2020 letter, Dr. Richard Karp, an infectious disease specialist, noted that appellant was being treated at the Oakland VA medical clinic for multiple medical problems including, a right rotator cuff tear status post repair. He also noted that his ADLs were significantly impaired by his ongoing pain, impaired right shoulder function, and stress from his chronic pain and inability to perform normal activities such as, household maintenance, complicated by the COVID-19 pandemic. Dr. Karp opined that the termination of appellant's benefits may have been premature.

In visit notes dated May 28 and July 24, 2019, Dr. Bulatov reiterated her prior right shoulder and right biceps diagnoses, and opinion that appellant had right shoulder pain and was totally disabled from work.

In a July 8 and 11, 2020 letters, appellant's representative contended that reports from Dr. Bulatov were not considered by OWCP or Dr. Welborn. She also contended appellant's prior conditions and resulting restrictions addressed in Dr. Karp's reports should be considered by OWCP.

Appellant's representative submitted a January 23, 2019 visit note from Dr. Nolan who advised that appellant remained temporarily totally disabled from work through March 15, 2019.

By decision dated August 13, 2020, an OWCP hearing representative affirmed the April 16, 2020 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 an employee's benefits.<sup>6</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>7</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>8</sup>

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<sup>6</sup> See *D.B.*, Docket No. 19-0663 (issued August 27, 2020); *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).

<sup>7</sup> 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).

<sup>8</sup> *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).

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>9</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>10</sup>

### 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 16, 2020, as he no longer had disability or residuals causally related to the accepted June 3, 1994 employment injury.

OWCP referred appellant to Dr. Welborn for a second opinion evaluation to determine the status of appellant's accepted right shoulder conditions and his work capacity.

In an October 21, 2019 report, Dr. Welborn opined that appellant had no residuals or disability related to his accepted right shoulder conditions, and no further medical treatment was needed. He noted his review of the SOAF and medical records, and examined appellant. On physical examination, Dr. Welborn reported essentially normal findings with the exception of tenderness to touch of the right shoulder. He opined that appellant had no objective residuals of the accepted conditions and that appellant's subjective pain did not correlate with objective findings. Dr. Welborn further opined that appellant could return to full-duty work with no right shoulder restrictions and no further medical treatment was necessary. In a Form OWCP-5c, he indicated that appellant's disability from his usual job and his work restrictions were not related to the June 3, 1994 employment injury, but related to his nonindustrial back and neck pain.

Dr. Welborn based his opinion on a proper factual and medical history. He provided physical examination findings and a well-rationalized opinion based on the medical evidence regarding the accepted conditions causally related to appellant's June 3, 1994 employment injury. Accordingly, the Board finds that OWCP properly relied on Dr. Welborn's second opinion report in terminating appellant's wage-loss compensation and medical benefits.<sup>11</sup>

Appellant submitted a series of reports from Dr. Bulatov and Dr. Nolan which provided findings regarding appellant's right shoulder, diagnosed right rotator cuff arthropathy, right biceps tendinitis, and depression, and opined that appellant was totally disabled from work, he had work restrictions, and continued medical treatment was needed. The Board notes that OWCP did not accept diagnoses of right rotator cuff arthropathy, right biceps tendinitis, and depression. Neither Dr. Bulatov nor Dr. Nolan explained how these conditions were disabling and causally related to the accepted employment injury.<sup>12</sup> Accordingly, these reports are insufficient to overcome the

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<sup>9</sup> *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).

<sup>10</sup> *K.W.*, *supra* note 8; *see A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

<sup>11</sup> *R.P.*, Docket No. 20-0891 (issued September 20, 2021); *K.W.*, Docket No. 19-1224 (issued November 15, 2019); *N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

<sup>12</sup> *R.P., id.*

weight of the medical evidence accorded to Dr. Welborn, or to create a conflict in medical opinion as to whether appellant's accepted conditions had resolved.<sup>13</sup>

As the weight of the medical evidence establishes that appellant had no further employment-related residuals or disability due to the accepted medical conditions, the Board finds that OWCP properly terminated his wage-loss compensation and medical benefits, effective April 16, 2020.

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

Once OWCP properly terminated compensation benefits, the burden shifts to appellant to establish continuing disability on or after that date causally related to the accepted injury.<sup>14</sup> To establish causal relationship between the accepted conditions 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>15</sup>

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

The Board finds that appellant has not met his burden of proof to establish continuing disability or residuals on or after April 16, 2020 causally related to the accepted June 3, 1994 employment injury.

Following the termination of appellant's compensation benefits, on April 16, 2020, OWCP received additional reports from Drs. Nolan and Bulatov related to appellant's medical treatment following April 16, 2020. In a May 13, 2020 note, Dr. Nolan reiterated his prior assessments of right rotator cuff arthropathy, right biceps tendinitis, and depression. In a June 9, 2020 Form OWCP-5c, he indicated that appellant was totally disabled from work and listed his permanent restrictions. Dr. Nolan advised that appellant's chronic pain syndrome, anxiety, and depression should be considered in evaluating appellant's ability to return to work. In notes dated May 28 and July 24, 2019, Dr. Bulatov noted appellant's complaints of right shoulder pain, reiterated her prior right shoulder and right biceps diagnoses, and opinion that appellant was totally disabled from work. These reports reiterated the physicians' prior conclusions regarding appellant's right shoulder condition, without further medical rationale. The Board has held that a mere conclusion without the necessary rationale as to whether a medical condition or disability is due to an accepted employment condition is insufficient to meet a claimant's burden of proof.<sup>16</sup> Dr. Nolan's and Dr. Bulatov's reports submitted following the termination of appellant's compensation benefits, regarding appellant's right shoulder conditions after April 16, 2020, are therefore of diminished

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

<sup>14</sup> *See J.N.*, Docket No. 20-1030 (issued November 20, 2020); *L.C.*, Docket No. 18-1759 (issued June 26, 2019).

<sup>15</sup> *Id.*

<sup>16</sup> *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *E.L.*, Docket No. 17-1632 (issued January 3, 2018).

probative value and insufficient to meet appellant's burden of proof to establish continuing residuals or disability.<sup>17</sup>

OWCP also received a June 2, 2020 letter from Dr. Karp. In this letter, Dr. Karp maintained that the termination of appellant's wage-loss compensation and medical benefits may have been premature as he had impaired right shoulder function, stress due to his chronic pain, and physical limitations following his authorized right rotator cuff tear status post repair and complicated by the COVID-19 pandemic. However, he did not provide medical rationale, based upon objective medical findings, sufficient to explain why appellant had any continuing residuals or disability causally related to the June 3, 1994 employment injury.<sup>18</sup> The Board has held that a medical report is of limited probative value regarding disability if it does not contain medical rationale explaining how such disability was related to an accepted employment injury.<sup>19</sup> This letter is, therefore, of limited probative value and is insufficient to meet appellant's 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(a) 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 April 16, 2020. The Board also finds that appellant has not met his burden of proof to establish continuing disability or residuals on or after April 16, 2020 causally related to the accepted June 3, 1994 employment injury.

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<sup>17</sup> *Y.J.*, Docket No. 20-1123 (issued September 27, 2021); *E.J.*, Docket No. 20-0013 (issued November 19, 2020).

<sup>18</sup> *See Y.J., id.*; *P.L.*, Docket No. 19-0268 (issued July 9, 2019).

<sup>19</sup> *V.D.*, Docket No. 19-0979 (issued February 5, 2020); *D.L.*, Docket No. 19-0900 (issued October 28, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 13, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 16, 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