

FACTUAL HISTORY

On January 4, 2017 appellant, then a 54-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on November 11, 2016 she injured her left upper arm when she opened the rear door of her mail truck, which was not in working order, while in the performance of duty. Appellant did not stop work. OWCP accepted the claim for a strain of unspecified muscle, fascia and tendon at the left shoulder and upper arm level, and an unspecified sprain of the left elbow. It subsequently expanded its acceptance of the claim to include a sprain of the left rotator cuff capsule, impingement syndrome of the left shoulder, bicipital tendinitis of the left shoulder, a loose body in the left elbow, and a lesion of the ulnar nerve of the left upper limb. OWCP paid appellant wage-loss compensation on the supplemental rolls effective March 19, 2017, and on the periodic rolls effective April 1, 2018.

A February 27, 2017 magnetic resonance imaging (MRI) scan of the left shoulder revealed a partial thickness tear of the distal supraspinatus insertion. A March 2, 2017 MRI scan of the left elbow revealed small joint effusion that could indicate an inflammatory process.

On July 19, 2018 Dr. Eon K. Shin, a Board-certified orthopedic surgeon, performed a left elbow arthroscopy with synovectomy and loose body removal, a left cubital tunnel release with submuscular transposition, and a left medial epicondylar debridement. On March 21, 2019 Dr. Kenneth A. Kearns, a Board-certified orthopedic surgeon, performed a rotator cuff repair and extensive glenohumeral debridement.

An MRI scan of the left shoulder, obtained on January 2, 2019, demonstrated status post an intact biceps tendon relocation process and a small degenerative partial-thickness tear along the undersurface of the distal anterior supraspinatus tendon.

On September 21, 2020 OWCP referred appellant to Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon, for a second opinion examination.

In an October 14, 2020 report, Dr. Didizian provided his review of the medical evidence and listed detailed findings on examination. He discussed the accepted conditions, related to the accepted November 11, 2016 employment injury. Dr. Didizian opined, within a reasonable degree of medical certainty, that appellant could return to her usual employment without restrictions and required no further medical treatment. He advised that appellant had “excellent motion of the left shoulder and elbow with no evidence of any inflammatory process or any weakness in the rotator cuff.” In a work capacity evaluation (Form OWCP-5c) of even date, Dr. Didizian found that appellant could return to her regular employment without restrictions.

In an addendum report dated March 1, 2021, Dr. Didizian reviewed appellant’s work duties as a rural carrier, which included occasional lifting of up to 70 pounds. He advised that while she could lift up to 70 pounds it would be imprudent due to her two left shoulder surgeries. Dr. Didizian recommended that appellant not lift 70 pounds for “preventive purposes” to avoid a re-tear. He noted that her separate surgery on August 6, 2020, for a right finger condition, would not affect her work abilities.

In an attending physician’s report (Form CA-20) dated March 9, 2021, Dr. Kearns diagnosed a left partial rotator cuff tear and checked a box marked “Yes” that the condition was

caused or aggravated by the described work incident of opening a mail truck. He provided a permanent lifting restriction of 20 pounds.³

On October 18, 2021 Dr. Kearns evaluated appellant for persistent left shoulder symptoms. He noted that an October 7, 2021 functional capacity evaluation (FCE) indicated that she could work “within the light physical demand category.” Dr. Kearns diagnosed a left partial rotator cuff tear and found that appellant had permanent work restrictions consistent with the FCE.

OWCP determined that a conflict existed between Dr. Kearns and Dr. Didizian regarding the extent of appellant’s work restrictions. On April 19, 2022 it referred her, together with the case record, and a statement of accepted facts (SOAF), to Dr. Stanley Askin, a Board-certified orthopedic surgeon, for an impartial medical examination.⁴

In a report dated June 22, 2022, Dr. Askin discussed appellant’s history of injury and medical treatment. He noted that she complained of left elbow pain medially with occasional left pinkie numbness and difficult “carrying items on her left shoulder.” On examination Dr. Askin found surgical scars on both shoulders and scarring from bilateral carpal tunnel releases. He further found full range of motion of the upper extremities with the exception of the right long digit, intact muscle function, a negative Phalen’s test bilaterally, a negative Finklestein’s test for de Quervain’s syndrome, and a positive Tinel’s sign at the left carpal tunnel. Dr. Askin provided his review of the medical records and noted the conditions accepted by OWCP. He related that the surgically treated conditions likely arose from degenerative processes temporarily aggravated by the November 11, 2016 employment injury. Dr. Askin noted, however, that the conditions had been accepted and the surgeries authorized. He opined that the treatment “created an aggravation of an underlying condition” and that appellant’s “interaction with the various surgically-oriented clinicians has proven to be contrary to her best interest.” Dr. Askin opined that her employment-related condition had resolved, noting that she had full range of motion of both the left shoulder and left elbow and “no present objective finding corroborative of a lingering consequence of her work injury.” He indicated that appellant had nonemployment-related conditions, including a pending right knee replacement, that would limit her work abilities. Dr. Askin asserted, however, that considering only the accepted conditions due to the November 11, 2016 employment injury, she could resume her usual employment. He opined that appellant had undergone an excess of surgical treatment for imperfections identified as due to the work injury when they were degenerative changes that “were not materially altered by her reported injury.” In a Form OWCP-5c of even date, Dr. Askin opined that appellant could work full time with no restrictions due to her accepted employment injury.

On July 13, 2022 OWCP advised appellant of its proposed termination of her wage-loss compensation and medical benefits as the evidence established that she no longer had any employment-related residuals or disability due to her November 11, 2016 employment injury. It indicated that its regulations provided her with 30 days to submit evidence or argument if she disagreed with the proposed termination of benefits.

³ Dr. Kearns completed a similar CA-20 form on May 3, 2022.

⁴ The record contains a Form MEO23 (appointment schedule notification) indicating that Dr. Askin was selected to serve as the impartial medical examiner (IME).

In a July 29, 2022 response, appellant's counsel asserted that OWCP had failed to demonstrate that Dr. Askin was properly selected as the IME. He further contended that the IME's report was unreasoned, devoid of rationale, and failed to provide measurements for motion and muscle testing. Counsel also maintained that Dr. Askin's opinion was inconsistent with the SOAF as he did not believe that the work injury necessitated the left shoulder and elbow surgeries.

On August 15, 2022 Dr. Kearns found that an examination of the left shoulder showed no erythema and full strength with resisted flexion and extension testing. He diagnosed a left partial rotator cuff tear and advised that he had discussed with appellant her permanent restrictions in accordance with the FCE.

In a report dated September 18, 2022, Dr. Kearns discussed the November 11, 2016 employment injury and reviewed his findings on his initial evaluation of appellant on December 3, 2018. He described his surgical treatment of appellant and subsequent follow-up visits. Dr. Kearns referred her for an FCE that indicated that she could perform light work. He asserted that appellant's injury to her left shoulder was directly related to her November 11, 2016 employment injury. Dr. Kearns opined that it was not possible for Dr. Askin to conclude that her condition was degenerative in nature absent preinjury object testing. He found that at a minimum any preexisting condition had been aggravated by the work injury. Dr. Kearns again opined that appellant had permanent work restrictions but required no further treatment for her shoulder.

By decision dated December 7, 2022, OWCP terminated appellant's wage-loss compensation and medical benefits effective that date. It found that the opinion of Dr. Askin, the IME, represented the special weight of the evidence and established that she had no further residuals or disability due to her accepted employment injury.

On December 13, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on June 1, 2023. Appellant described her work injury and current weakness and limitations due to her left shoulder and elbow condition. Counsel argued that Dr. Askin failed to explain why a finding of full range of motion of the left upper extremity would permit her to perform her work duties, especially in view of her multiple surgeries. He further maintained that he failed to explain his findings in view of the FCE or provide the rationale necessary to be afforded the special weight of the evidence.

By decision dated July 25, 2023, OWCP's hearing representative affirmed the December 7, 2022 decision.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ To terminate

⁵ See *L.M.*, Docket No. 22-0342 (issued August 25, 2023); *T.C.*, Docket No. 20-1163 (issued July 13, 2021); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁶ *L.K.*, Docket No. 20-0443 (issued August 8, 2023); *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Furman G. Peake*, 41 ECAB 361 (1990).

authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁷

Section 8123(a) of FECA provides in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”⁸ The implementing regulation states that, if a conflict exists between the medical opinion of the employee’s physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁹

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist 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.¹⁰

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant’s wage-loss compensation and medical benefits effective July 25, 2023 as she no longer had disability or residuals causally related to her accepted November 11, 2016 employment injury.

OWCP properly determined that there was a conflict in medical opinion between Dr. Kearns, appellant’s treating physician, and Dr. Didizian, an OWCP second opinion physician, regarding the extent of appellant’s disability causally related to the accepted employment injury. To resolve the conflict, it referred appellant, pursuant to 5 U.S.C. § 8123(a), to Dr. Askin for an impartial medical examination.¹¹

Where a case is referred to an IME for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently rationalized and based on a proper factual and medical background, must be given special weight.¹²

In a report dated June 22, 2022, Dr. Askin reviewed the history of injury, medical evidence of record, and accepted conditions. He discussed appellant’s current complaints of left elbow pain, difficulty carrying items on her left shoulder, and occasional numbness in her left pinkie. On examination Dr. Askin found full upper extremity range of motion except for the right long digit,

⁷ *A.J.*, Docket No. 18-1230 (issued June 8, 2020); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

⁸ 5 U.S.C. § 8123(a).

⁹ 20 C.F.R. § 10.321.

¹⁰ See *J.P.*, Docket No. 23-0075 (issued March 26, 2023); *C.M.*, Docket No. 20-1647 (issued October 5, 2021); *James P. Roberts*, 31 ECAB 1010 (1980).

¹¹ *Id.*

¹² *L.S.*, Docket No. 20-1204 (issued October 4, 2021); *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Roger Dingess*, 47 ECAB 123 (1995).

intact muscle function, negative Phalen's and Finklestein's tests, and a positive Tinel's sign at the left carpal tunnel. He opined that appellant's surgeries likely treated degenerative processes that had been temporarily aggravated by the accepted employment injury. Dr. Askin further noted, however, that OWCP had authorized the surgeries and listed the conditions accepted by OWCP. He advised that the surgeries had aggravated an underlying condition and had not been beneficial for appellant. Dr. Askin opined that her employment-related conditions had resolved based on her full range of motion of the left shoulder and left elbow and the lack of objective findings supporting continued consequences of the work injury. He opined that, considering only the conditions resulting from the November 11, 2016 employment injury, appellant could return to her usual employment. Dr. Askin advised that she had received an excess of medical treatment.

The Board finds that Dr. Askin's opinion, as IME, is entitled to the special weight of the medical evidence and establishes that appellant no longer had disability or residuals causally related to the accepted November 11, 2016 employment injury. He based his opinion on a proper factual and medical history and provided detailed findings on examination.¹³ Dr. Askin is a specialist in the appropriate field. He provided a well-rationalized opinion that appellant had no further residuals causally related to her accepted employment injury, explaining that findings on examination demonstrated no continued employment-related condition that resulted in disability or required further medical treatment.¹⁴ As the IME, Dr. Askin's opinion is entitled to the special weight of the evidence. Accordingly, OWCP properly relied upon his report in terminating appellant's wage-loss compensation and medical benefits.¹⁵

The additional evidence submitted prior to OWCP's termination of appellant's compensation and medical benefits is insufficient to overcome the special weight afforded to Dr. Askin as IME. On August 15, 2022 Dr. Kearns diagnosed a left partial rotator cuff tear and noted that he had spoken with appellant about her permanent restrictions as found by the FCE. In a September 18, 2022 report, he discussed his treatment of appellant beginning December 3, 2018 for a November 11, 2016 employment injury. Dr. Kearns disagreed with Dr. Askin's opinion that her condition was degenerative in nature as there was no preinjury testing upon which to base such a determination. He found that appellant had permanent work restrictions but required no further shoulder treatment. Dr. Kearns did not, however, provide any rationale for his conclusion that appellant had continuing employment-related disability and thus his opinion is of little probative value.¹⁶ Further, he was on one side of the conflict which Dr. Askin had resolved. The Board has held that reports from a physician who was on one side of a medical conflict are generally insufficient to overcome the special weight accorded to the IME, or to create a new conflict.¹⁷ Consequently, the medical evidence from Dr. Kearns is insufficient to overcome the special weight afforded to Dr. Askin as IME.

¹³ *S.V.*, Docket No. 23-0474 (issued August 1, 2023); *J.S.*, Docket No. 20-1409 (issued September 1, 2021).

¹⁴ *J.P.*, *supra* note 10; *J.S.*, *id.*

¹⁵ *See L.S.*, *supra* note 12; *L.B.*, Docket No. 19-1380 (issued February 11, 2020).

¹⁶ *G.H.*, Docket No. 20-0892 (issued July 9, 2021); *see also A.T.*, Docket No. 20-0334 (issued October 8, 2020) (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).

¹⁷ *See G.H.*, *id.*; *Y.I.*, Docket No. 20-0263 (issued November 30, 2020); *C.L.*, Docket No. 18-1379 (issued February 5, 2019); *I.J.*, 59 ECAB 408 (2008).

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective July 25, 2023 as she no longer had disability or residuals causally related to her accepted November 11, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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