

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

C.J., Appellant

and

**U.S. POSTAL SERVICE, BRONX POST
OFFICE, Bronx, NY, Employer**

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**Docket No. 12-1559
Issued: December 7, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 20, 2012 appellant filed a timely appeal from a May 25, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating her compensation benefits. Pursuant to the Federal Employees' Compensation Act¹ (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 met its burden of proof to terminate appellant's compensation effective May 25, 2012 on the grounds that she had no further disability causally related to her August 22, 1997 employment injury; and (2) whether it properly terminated authorization for medical treatment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 23, 1997 appellant, then a 43-year-old part-time flexible mail handler, filed a traumatic injury claim alleging that on August 22, 1997 she injured her right shoulder, arm and leg when she was pushed into a wall by an all-purpose container. She stopped work on August 23, 1997. OWCP accepted the claim for multiple contusions, right shoulder sprain, right shoulder adhesive capsulitis and thoracic sprain.

Appellant returned to work on May 20, 1998 but stopped work on July 3, 1998 and filed a recurrence of disability claim. OWCP accepted that she sustained a recurrence of disability and paid her compensation for total disability. On May 12, 1999 appellant underwent a debridement of a right rotator cuff tear, an excision of a labrum tear and a partial acromioplasty.

In a report dated January 19, 2012, Dr. Neil Weisman, a Board-certified anesthesiologist, evaluated appellant for “cervical pain radiating into her right shoulder and hand.” He diagnosed cervical radiculopathy, cervical spondylosis, cervical disc displacement and right shoulder pain. Dr. Weisman recommended continued management of symptoms with medication.

On January 31, 2012 OWCP referred appellant to Dr. Jonathan Black, a Board-certified orthopedic surgeon, for a second opinion evaluation.² In a report dated February 15, 2012, Dr. Black discussed her history of a work injury on August 22, 1997. On examination he found no swelling, atrophy, ecchymosis or deformity of the right shoulder but generalized tenderness to palpation. Dr. Black measured full range of motion with pain on abduction and forward flexion. He found positive impingement of the right shoulder. On examination of the cervical spine, Dr. Black found a mild decrease in range of motion with “no convincing production of radicular symptoms by these maneuvers.” He stated:

“[Appellant] reports continued right shoulder pain. There [are] no objective findings on physical examination to support continuing diagnosis of adhesive capsulitis. [Appellant] likely has some element of right shoulder bursitis as she has a positive impingement sign. There is no objective evidence of ongoing sprains of the thoracic spine or right shoulder.”

Dr. Black found that appellant was not disabled from employment due to her August 22, 1997 injury. He concluded that she had no evidence of a thoracic sprain, upper arm or shoulder sprain, contusions or adhesive capsulitis. Dr. Black noted that appellant’s “subjective complaints outweigh any objective findings.” He opined that she could return to her usual employment.

On March 28, 2012 OWCP notified appellant that it proposed to terminate her compensation and authorization for medical benefits as the evidence supported that she had no further employment-related disability or condition.

² In a report dated October 2, 2009, Dr. William Dinenberg, a Board-certified orthopedic surgeon and OWCP referral physician, diagnosed chronic cervical sprain, degenerative disc disease of the cervical spine and right shoulder impingement syndrome and adhesive capsulitis. He advised that appellant could resume work with modifications.

In a report dated March 22, 2012, received by OWCP on April 2, 2012, Dr. Weisman related that he began treating appellant in December 2010 for complaints of pain in her cervical spine, upper back, shoulder and bilateral upper extremities which she “reported was from a work-related injury that occurred in 1997.” He related that a magnetic resonance imaging (MRI) scan study of the neck revealed a degenerative disc at C5-6 and C6-7. Dr. Weisman indicated that appellant “states that the pain continues to affect her activities of daily living and activity tolerance....”

In a progress report dated April 2, 2012, Dr. Weisman discussed appellant’s complaints of pain and diagnosed cervical radicular symptoms, cervical disc displacement and right shoulder pain.

In a statement dated April 11, 2012, appellant related that Dr. Black performed a brief examination and did not list all of her medications. She provided a February 4, 2000 work capacity evaluation and copies of Dr. Weisman’s reports since he began treating her in 2010. Appellant related that OWCP should accept her neck pain as work related and noted that she had chronic pain in her right arm and hand.

On May 9, 2012 OWCP requested that Dr. Black clarify whether appellant’s impingement and bursitis were employment related and if she had any residuals of her injury. In a supplemental report dated May 14, 2012, Dr. Black related:

“On physical examination [appellant] had no signs and symptoms of ongoing adhesive capsulitis. She did not have any ongoing evidence of sprains of the thoracic spine or right shoulder. [Appellant] did however have a positive impingement sign which is an indicator of impingement with bursitis. This is a degenerative condition and is not due to her injury. [Appellant] is able to initiate abduction and forward flexion and as such does not have signs of rotator cuff dysfunction. She has pain with overhead reaching which is a symptom of bursitis. Again I do not feel that this is due to her injury. It is a degenerative condition.”

Dr. Black determined that appellant had no residuals of her August 22, 1997 employment injury. In an accompanying work restriction evaluation, he found, considering only the injury-related conditions, that she could resume her usual employment.

By decision dated May 25, 2012, OWCP terminated appellant’s compensation and authorization for medical treatment effective that date. It found that the opinion of Dr. Black represented the weight of the medical evidence and established that she had no further disability or residuals of her accepted employment injury.

On appeal appellant asserted that she had difficulties performing her activities of daily living without medication due to pain and her inability to lift with her right hand. She related that Dr. Black examined her for only 15 to 20 minutes.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee’s benefits. It may not terminate compensation

without establishing that the disability ceased or that it was no longer related to the employment.³ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained multiple contusions, right shoulder sprain, right shoulder adhesive capsulitis and thoracic sprain due to an August 22, 1997 employment injury. Appellant stopped work on August 22, 1997, returned to work on May 19, 1998 but stopped work again on July 3, 1998 and did not return. OWCP paid her compensation for total disability.

On January 31, 2012 OWCP referred appellant to Dr. Black for a second opinion examination. In a February 15, 2012 report, Dr. Black discussed appellant's history of an August 22, 1997 work injury and indicated that he had reviewed the medical evidence of record. On examination of the right shoulder, he found positive impingement signs and pain with abduction and forward flexion. Dr. Black measured full range of motion of the shoulder and no swelling or atrophy. He determined that appellant had no definite radicular symptoms with range of motion of the cervical spine. Dr. Black opined that she had no objective evidence of adhesive capsulitis, right shoulder sprain, upper arm sprain, contusions or thoracic sprain. He diagnosed right shoulder bursitis based on signs of positive impingement. Dr. Black determined that she had no further disability due to her August 22, 1997 employment injury. In a supplemental report dated May 14, 2012, he opined that appellant's right shoulder bursitis was a degenerative condition unrelated to her work injury. Dr. Black found that she had no residuals of her employment injury and could, considering only her injury, perform her usual employment.

The Board has reviewed the opinion of Dr. Black and finds that it has reliability, probative value and convincing quality with respect to the conclusion reached that appellant had no further employment-related disability.⁵ Dr. Black based his opinion on an accurate factual and medical history and the findings on examination. He provided rationale for his conclusion that appellant's accepted conditions of right shoulder sprain and adhesive capsulitis, multiple contusions and thoracic sprain had resolved by explaining that he found no objective evidence of the conditions on examination. Dr. Black found that she had right shoulder bursitis due to a degenerative condition unrelated to her work injury. He noted that appellant could perform abduction and forward flexion but had pain with overhead reaching. Dr. Black explained that such findings indicated bursitis, a degenerative condition, rather than a rotator cuff problem. The Board finds that Dr. Black's report, which is reasoned and based on a proper history, constitutes the weight of the evidence and establishes that appellant's multiple contusions, right shoulder sprain, right shoulder adhesive capsulitis and thoracic sprain have resolved.⁶

³ *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁵ *See Pamela K. Guesford*, 53 ECAB 726 (2002).

⁶ *See E.J.*, 59 ECAB 695 (2008).

The remaining evidence submitted prior to OWCP's termination of compensation is insufficient to show that appellant remained disabled due to her work injury.⁷ In a progress report dated January 19, 2012, Dr. Weisman diagnosed cervical radiculopathy, cervical spondylosis, cervical disc displacement and right shoulder pain, and recommended pain management. He did not, however, address the cause of appellant's condition. Consequently, Dr. Weisman's report is of little probative value.⁸

On March 22, 2012 Dr. Weisman indicated that he had treated appellant since December 2010 for cervical spine, upper back, shoulder and bilateral upper extremity pain which she attributed to a 1997 employment injury. He discussed appellant's assertion that the pain affected her "activities of daily living." Dr. Weisman, however, did not make an independent determination of causation or find her disabled from employment. A physician's report is of little probative value when it is based on a claimant's belief regarding causal relationship rather than a doctor's independent judgment.⁹

In an April 2, 2012 progress report, Dr. Weisman noted that appellant continued to experience pain and diagnosed cervical radiculopathy, a displaced cervical disc and right shoulder pain. He did not, however, address the cause of the diagnosed conditions. As discussed, medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹⁰

On appeal appellant argues that Dr. Black performed a cursory examination, as discussed, however, Dr. Black's opinion was based on comprehensive physical findings and supported by rationale. Consequently, it represents the weight of the medical evidence.

LEGAL PRECEDENT -- ISSUE 2

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹¹ 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.¹²

⁷ In response to OWCP's proposed termination, appellant submitted a 2000 work restriction evaluation and progress reports from Dr. Weisman since 2010. The issue, however, is whether she is disabled due to her work injury as of May 25, 2012.

⁸ See *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of little probative value on the issue of causal relationship).

⁹ *Earl David Seal*, 49 ECAB 152 (1997).

¹⁰ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

¹¹ See *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, *supra* note 5.

¹² *Id.*

ANALYSIS -- ISSUE 2

OWCP met its burden of proof to terminate authorization for medical benefits through the opinion of Dr. Black, who provided a second opinion examination and found that appellant had no residuals of her accepted conditions. Dr. Black explained that based on his physical examination, she had no further residuals of her multiple contusions, right shoulder sprain, right shoulder adhesive capsulitis and thoracic sprain. His report is based on a proper history and a thorough examination and supported by medical reasoning; consequently, it is sufficient to establish that appellant has no further residuals of her accepted employment injury.

On appeal appellant argues that she needs to take medication for her work injury to perform her activities of daily living. The issue in this case, however, is medical in nature and must be resolved by the submission of rationale medical evidence.¹³

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 met its burden of proof to terminate appellant's compensation and authorization for medical treatment effective May 25, 2012 on the grounds that she had no further disability or residuals causally related to her August 22, 1997 employment injury.

¹³ See *Gloria J. McPherson*, 51 ECAB 441 (2000).

ORDER

IT IS HEREBY ORDERED THAT the May 25, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board