

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

F.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New York, NY, Employer**

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**Docket No. 13-2066
Issued: March 11, 2014**

Appearances:
Lonnie Boylan, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On September 9, 2013 appellant, through his representative, filed a timely appeal from a May 20, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 compensation for wage-loss and medical benefits effective January 14, 2013 with respect to the accepted left shoulder condition; and (2) whether appellant has established any additional conditions causally related to the December 20, 2010 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 5, 2011 appellant, then a 50-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 20, 2010 she sustained injuries to her left shoulder and arm while in the performance of duty. She indicated on the claim form that she was lifting buckets onto the freight elevator to deliver mail. In a note dated January 4, 2011, Dr. Mary Mattheos, an internist, diagnosed a severe sprain/strain and stated that appellant could not work for two weeks. On February 7, 2011 OWCP accepted the claim for closed dislocation of the left shoulder. It paid wage-loss compensation commencing March 12, 2011.

In a report dated March 23, 2011, Dr. Anthony Cappellino, a Board-certified orthopedic surgeon, diagnosed left shoulder strain and cervical derangement. He stated that he believed appellant's symptoms were related to cervical pathology, and the initial shoulder injury "incorporated the neck."

By report dated April 20, 2011, Dr. Amit Patel, a pain management specialist, provided a history and results on examination. He diagnosed myofascial pain syndrome, cervical radiculitis and cervical spinal stenosis. In a report dated May 18, 2011, Dr. Patel also diagnosed facet arthropathy. By report dated June 15, 2011, Dr. Cappellino diagnosed cervical derangement and radiculopathy, as well as left shoulder derangement. He indicated that appellant could work part-time light duty with limited casing and overhead lifting.

OWCP referred appellant, along with medical records and a statement of accepted facts (SOAF) for a second opinion examination by Dr. Leon Sultan, a Board-certified orthopedic surgeon. In a report dated August 4, 2011, Dr. Sultan provided a history and results on examination. He noted in his history that appellant had a prior work-related right shoulder injury that resulted in an ulnar nerve transposition surgery. Dr. Sultan diagnosed a musculoskeletal left shoulder strain. He stated that the objective examination findings "reveals that her accepted conditions have resolved, leaving her with no residual permanency and from a clinical point of view, she has reached a point of maximum medical improvement from the original occurrence of [December 20, 2010]." With respect to any additional employment-related injuries, Dr. Sultan stated that the evidence "does not indicate that the claimant suffered any other or additional injuries due to the claimed factors of employment." He noted that diagnostic studies had indicated degenerative changes from C3-4 to C6-7 with no significant cord compression, along with moderate-to-severe left neural foraminal narrowing at C6-7 and neural foraminal narrowing bilaterally at C5-6 and on the left at C4-5 unchanged from the prior examination of January 22, 2007. Dr. Sultan concluded that "these reported findings are preexisting multilevel degenerative changes that are not reflected in today's examination and are unrelated to the original occurrence of [December 20, 2010]."

In a report dated August 9, 2011, Dr. Patel indicated that appellant's left shoulder motion was mildly limited by pain. He diagnosed myofascial pain syndrome, cervical spondylosis and stenosis and shoulder pain. Dr. Patel indicated that appellant could work with a 10-pound lifting restriction.

Appellant remained off work and continued to receive treatment from Dr. Patel. In a report dated September 18, 2012, Dr. Daniel Kohane, a pain medicine specialist, indicated that

appellant continued to have neck pain. He indicated that the primary diagnosis was cervical radiculitis, with additional diagnoses of cervical spondylosis and stenosis, myofascial pain syndrome and shoulder pain.

OWCP again referred appellant to Dr. Sultan for a supplemental second opinion examination. In a report dated November 13, 2012, Dr. Sultan provided a history and results on examination. He reiterated his statements provided in the August 4, 2011 report with respect to appellant's condition and its relationship to her employment.

By letter dated December 10, 2012, OWCP advised appellant that it proposed to terminate compensation for wage-loss and medical benefits. It stated that the weight of the evidence was represented by Dr. Sultan, and appellant was provided 30 days to submit evidence or argument.

In a decision dated January 14, 2013, OWCP terminated compensation for wage-loss and medical benefits. Appellant requested a review of the written record by an OWCP hearing representative, and submitted a January 29, 2013 report from Dr. Cappellino who provided a history and results on examination. Dr. Cappellino stated that "the injury [appellant] sustained was a traction-type injury to the shoulder and neck. This resulted in cervical radicular symptoms. There was a mild strain of the rotator cuff; however, most of her pain and discomfort from the onset was more related to the paresthesia, numbness, and tingling which partially resolved; however, there is still persistent radicular-type phenomena and cervical pathology. There may be spondylosis or degenerative changes in the spine; however, the subsequent pathology was due to the traction injury sustained to the cervical spine and shoulder." Dr. Cappellino indicated that appellant could work with restrictions that included no more than 10 pounds lifting and no overhead activity.

By decision dated May 20, 2013, the hearing representative affirmed the termination of compensation for wage-loss and medical benefits. The hearing representative found the weight of the medical evidence rested with Dr. Sultan, and appellant's physicians did not provide rationalized opinions on causal relationship.²

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, OWCP must establish that appellant

² The hearing representative did not specifically discuss Dr. Cappellino's January 29, 2013 report.

³ *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

no longer has residuals of an employment-related condition which require further medical treatment.⁴

ANALYSIS -- ISSUE 1

In the present case, the only accepted condition was for a left shoulder dislocation. With respect to the accepted condition, it is OWCP's burden of proof to terminate compensation for wage-loss and medical benefits. The second opinion physician, Dr. Sultan, opined in his August 4, 2011 and November 13, 2012 reports that the accepted left shoulder condition had resolved. He provided results on left shoulder examination and a medical history. Dr. Sultan indicated that his opinion was based on the objective evidence from the examination.

The attending physicians in this case did not provide a rationalized medical opinion that appellant continued to have an employment-related left shoulder condition as of January 14, 2013. Drs. Patel and Kohane referred briefly to shoulder pain but did not provide an opinion that appellant continued to have a diagnosed employment-related left shoulder condition. The primary diagnosis regarding appellant's continuing treatment was related to a cervical condition and a myofascial pain syndrome. Dr. Cappellino also indicated in his January 29, 2013 report that appellant's continuing condition was related to "radicular-type phenomena and cervical pathology."

The issue of a cervical or other condition as employment related will be discussed below. As to the termination of compensation for the accepted left shoulder condition, the weight of the evidence rests with the second opinion physician. Dr. Sultan provided a rationalized opinion that appellant's accepted left shoulder condition had resolved.⁵

On appeal, appellant's representative argues that the SOAF was inadequate as it did not include information regarding another claim accepted for right lateral epicondylitis. The issue in this case was related to the left shoulder, and the July 18, 2011 SOAF provided an appropriate background for the December 20, 2012 claim. In addition, the Board notes that Dr. Sultan referred to a right shoulder injury and surgery in his medical history. He was provided an adequate background to provide an opinion on the issues presented in this case. The Board reiterates that the evidence was sufficient to support a termination of compensation with respect to the accepted left shoulder injury.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged,

⁴ *Furman G. Peake*, 41 ECAB 361 (1990).

⁵ Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the opinion. *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶

Section 8123(a) of FECA provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.⁷ When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to a referee physician, pursuant to section 8123(a), to resolve the conflict in the medical evidence.⁸

ANALYSIS -- ISSUE 2

The record indicates that following the December 20, 2010 injury appellant reported cervical radicular symptoms and was treated for cervical conditions. Dr. Cappellino opined in his January 29, 2013 report that appellant sustained a traction-type injury that caused a mild strain but also resulted in a cervical injury with radiculopathy that produced numbness and pain in the left arm. On the other hand, Dr. Sultan found that no additional conditions were employment related, finding that the cervical symptoms resulted from degenerative changes that preexisted the December 20, 2010 injury.

The Board finds that a conflict exists in the medical evidence with respect to whether appellant has a diagnosed cervical condition causally related to the December 20, 2010 employment injury. The case will be remanded to OWCP to resolve the conflict with respect to whether appellant sustained additional employment-related injuries. After such further development as OWCP deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate compensation for wage-loss and medical benefits with respect to the accepted left shoulder condition. The Board further finds that the case must be remanded for further development with respect to whether appellant sustained additional employment-related conditions.

⁶ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

⁸ *William C. Bush*, 40 ECAB 1064 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 20, 2013 is affirmed with respect to termination of compensation. The decision is set aside with respect to additional medical conditions and the case remanded to resolve a conflict in the evidence.

Issued: March 11, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board