United States Department of Labor
Employees' Compensation Appeals Board

K.W., Appellant	)	
and	)	**Docket No. 12-1467**
	)	**Issued: April 5, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Columbus, IN, Employer	)	

Appearances:
Joseph E. Allman , Esq., 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 22, 2012 appellant, through her attorney, filed a timely appeal of the December 29, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective June 24, 2011; and (2) whether appellant has met her burden of proof to establish that her claim be expanded to include a bilateral shoulder condition.

On appeal appellant, through counsel, contends that she continues to have residuals from her accepted conditions and that the medical evidence supports that appellant suffered a bilateral shoulder condition causally related to her accepted employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 8, 2008 a traumatic injury claim was filed on behalf of appellant, then a 50-year-old sales/distribution clerk. The claim form indicates that on September 6, 2008, she was struck by a cart. On November 21, 2008 OWCP accepted appellant's claim for cervical strain, closed head injury/postconcussion syndrome. Appellant stopped work on the date of the injury. OWCP paid compensation and medical benefits.

On September 12, 2008 Dr. Laura Nutter, appellant's treating Board-certified family practitioner, diagnosed appellant with closed head injury with cervical compression.

On February 27, 2009 Dr. Gregory B. Nazar, a Board-certified neurosurgeon, reviewed treating appellant's magnetic resonance imaging (MRI) scan of October 27, 2008 and determined that it was a normal cervical study. He noted that his clinical impression was that she had a subjective strain/sprain precipitated by the employment injury on September 6, 2008. Dr. Nazar noted that appellant was now five months postinjury and that her symptoms of numbness were unusual, so a repeat MRI scan study was recommended. He diagnosed a cervical strain which subjectively has not resolved following the accident.

On March 12, 2009 OWCP referred appellant to Dr. David G. Changaris, a Board-certified orthopedic surgeon, for a second opinion. In an April 7, 2009 report, Dr. Changaris listed his impression as restrictive neck disease; restrictive shoulder disease, bilaterally; headaches, prior history of migraines per client report, worsened by the employment-related injury; and brain injury with traumatic pituitary insufficiency. He noted that based upon client history, medical records and physical examination, the injuries are solely due to the employment-related injury of record. Dr. Changaris opined that appellant's employment-related injury was still active, that she still had residuals and that she had not returned to her baseline condition prior to the employment injury. He placed restrictions on her return to work.

A repeat MRI scan of the cervical spine conducted on March 23, 2009 was interpreted as showing no osseous abnormality.

On May 6, 2009 OWCP forwarded a copy of Dr. Changaris' report to Dr. Nazar and asked for comments. In a hand-written response, Dr. Nazar indicated that appellant does not have restrictive neck disease, traumatic brain injury or pituitary insufficiency. He noted that there was no evidence to support a worsening of migraines.

On August 6, 2009 OWCP referred appellant to Dr. Arthur Hughes, a Board-certified neurologist, for an impartial medical examination. It listed the reason for review as conflict of opinion between Dr. Nazar and Dr. Changaris with regards to the extent of the employment-related injury, the degree of disability associated with the work-related condition and the physical limitations/restrictions imposed by residuals from appellant's employment injury.

In a September 1, 2009 report, Dr. Hughes noted that appellant described her accident in overly dramatic terms. He indicated that there was no evidence that she suffered any type of brain injury and thus she should have no cognitive impairment at this point attributable to the

accident. Dr. Hughes noted that there was no abnormality on the cervical MRI scan or on the cervical spine x-rays or on the electromyogram. He diagnosed cervical strain and closed head injury/postconcussion injury as well as compression of left median nerve at wrist, bilateral shoulder pain and limitation of motion, migraine by history. Dr. Hughes indicated that the only employment-related conditions were cervical strain and closed head injury/postconcussion injury. He opined that there were no current objective findings supporting the accepted conditions of cervical strain and closed head injury/postconcussion syndrome and he concluded that these conditions are no longer present and active and have resolved. Dr. Hughes indicated that appellant's current complaints were not attributable to the work injuries, but were due to nonwork-related factors, presumably nonorganic. He noted that she had no need for continuing treatment for the accepted conditions. In an October 1, 2009 addendum, Dr. Hughes indicated that, although he suggested a period of work hardening in his previous report, this was a suggestion and not a requirement. He noted that if appellant refused to pursue work hardening, then she was capable of returning to her date-of-injury job. Dr. Hughes noted that a brief period of work hardening would be helpful but was not medically necessary.

In a September 2, 2009 report, Dr. Nutter stated that appellant had a devastating neck injury at work on September 6, 2008 and that since that time she has suffered from neck pain, back pain, visual disturbance, frequent headaches, left arm pain radiating from the neck, memory loss, decreased concentration and altered speech. She noted that the most persistent of these symptoms has been her left upper extremity pain that is aggravated by minimal use and movement. Dr. Nutter noted that appellant's postinjury, painful shoulder movement is documented within the first month of her office records. She indicated that, although the blow appellant received did not make direct contact with her upper extremities, she had no doubt that the ongoing left shoulder and arm pains are a direct consequence of the cervical sprain of the same day. Dr. Nutter continued to extend appellant's medical leave from work.

Counsel, by letter dated February 15, 2011, requested OWCP to expand the accepted conditions to include bilateral adhesive capsulities.

On February 22, 2010 OWCP proposed to terminate appellant's benefits as she had no further residuals from her employment injury based on the opinion of Dr. Hughes.

Dr. Nutter noted in an undated report received by OWCP on March 23, 2010 that she had been seeing appellant regularly since two days after her employment injury. She discussed her treatment of appellant. Dr. Nutter opined that appellant was not a malingerer. She indicated that appellant could try to return to her employment if she could perform about one-fourth of the work she previously performed. Dr. Nutter believed appellant's claims were justified.

In a November 4, 2010 report, Dr. Daniel S. Brown, a physician Board-certified in occupational and environment medicine, noted diagnoses of acute employment-related injury on September 6, 2008, chronic upper arm and shoulder pain, dysfunction and bilateral adhesive capsulitis (frozen shoulder). He indicated that differential diagnoses include adhesive capsulitis, severe myofascial syndrome, thoracic myelopathy and conversion reaction. Dr. Brown did note some degree of psychological overlay in appellant's symptoms. He opined that within a reasonable degree of medical certainty, her current condition arose from the injury she sustained on September 6, 2008. Dr. Brown noted that there were no records to suggest a preexisting

similar condition and that there had been a marked alteration in appellant's functional status. He evaluated her impairment and determined that she had an 18 percent impairment of her right upper extremity and a 24 percent impairment of her left upper extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). Dr. Brown recommended future medical evaluations and treatment and noted that appellant was not at maximum medical improvement.

OWCP referred appellant to Dr. Edward Gregory Fisher, a Board-certified orthopedic surgeon, for a second opinion. In an April 15, 2011 opinion, Dr. Fisher reviewed appellant's employment and medical history. He noted that a sprain/strain of the cervical area is a soft tissue injury and would have healed and resolved in a matter of a few weeks up to two months after the injury and was not present on clinical examination. Dr. Fisher noted that appellant's current objective clinical finding about the neck is restriction of range of motion secondary to pain complaints and muscle tightness over the neck area. He did not believe that she had bilateral adhesive capsulitis as noted by Dr. Brown. Dr. Fisher noted that appellant did not injure either shoulder at the time of the injury of September 6, 2008 and began complaining of decreased range of shoulder motion when she noted chronic pain over the neck with subsequent decrease in range of both the neck and bilateral shoulders secondary to this pain. He noted that her decreased range of motion of shoulders is strictly due to persistent generalized pain and not due to bilateral adhesive capsulitis which implies fibrosis or scar tissue causing tightening of the capsule and ligaments about the shoulder which was not the case with appellant. Dr. Fisher concluded that appellant was not medically capable of returning to her date-of-injury job but was capable of working with restrictions and because of the chronicity of the condition the restrictions were permanent in duration. He opined that no further definitive treatment was necessary and/or appropriate for the employment-related conditions and that treatment was strictly supportive maintenance care.

By decision dated June 3, 2011, OWCP denied appellant's claim for compensation for bilateral adhesive capsulitis.

Dr. Fisher issued an addendum to his report dated June 9, 2011 wherein he responded to OWCP's questions. He opined that appellant did not suffer from active residuals of the accepted work injury of a cervical strain. Dr. Fisher opined that if she had chronic pain symptoms over the neck and upper back, it was not related medically to the employment injury or to the accepted employment-related conditions of cervical sprain and closed head injury/postconcussion syndrome since all of the objective tests were normal for cervical involvement. He noted that the only objective finding was a mild carpal tunnel syndrome on the left side which was in no way related to her employment injury.

On June 24, 2011 OWCP terminated appellant's wage loss and medical benefits effective June 24, 2011.

Appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

In a September 1, 2011 report, Dr. Brown indicated that he reviewed Dr. Fisher's examination and the decision terminating benefits. He indicated that soft tissue injuries often

lead to chronic conditions and these often resulted in long-term loss of motion even with successful surgical reports. Dr. Brown noted that Dr. Fisher had referred to appellant's active resediuals cervical strain and chronic pain which caused restricted range of motion and muscle tightness secondary to pain complaints over her neck and shoulders. He opined that Dr. Fisher's conclusions were consistent with a causal relationship between the accepted injury of September 6, 2008 and appellant's loss of motion. Dr. Brown stated that while he would have though it desirable to obtained MRI scans of the shoulders, he recognized that a careful examination by a Board-certified orthopedic surgeon is the typical way in which adhesive capsulitis is diagnosed. However, he did not recall a single case of adhesive capsulitis being ruled out that did not include an MRI scan. Dr. Brown noted that after reading Dr. Fisher's report, it was possible to agree with his diagnoses and conclusions regarding the reasons for the marked loss of motion in appellant's shoulders.

At the hearing held on October 14, 2011, OWCP's hearing representative listed the issues as whether there was a causal relation between appellant's employment injury and her bilateral shoulder condition and termination of benefits. Appellant testified and discussed her employment, her injury and the medical treatment for that injury. She further discussed how her daily routine was altered due to her injury and indicated that she had not been physically able to do any job since September 2008.

By decision dated December 29, 2011, OWCP's hearing representative affirmed OWCP's decisions of June 3 and 24, 2011.

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.[2] 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.[3] To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.[4]

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.[5] When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.[6] In situations where there are opposing medical reports of virtually equal weight and

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

[3] *Gewin C. Hawkins*, 52 ECAB 242 (2001).

[4] *M.D.*, Docket No. 11-1737 (issued April 3, 2012); *Calvin S. Mays*, 39 ECAB 993 (1988).

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

[6] *Delphia Y. Jackson*, 55 ECAB 373 (2004).

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 rationale and based on a proper factual background, must be given special weight.[7]

ANALYSIS -- ISSUE 1

OWCP found that appellant's accepted conditions of cervical strain, closed head injury/postconcussion syndrome resolved by June 24, 2011 and terminated her medical and compensation benefits on that date. In making this determination, it gave special weight to the opinion of Dr. Hughes. The Board finds that OWCP improperly terminated appellant's compensation benefits.

OWCP referred appellant to Dr. Hughes for an impartial medical examination. At the time of the referral, there was no conflict as to whether appellant had continuing residuals from her injury. Dr. Nutter continued to opine that she was disabled due to her accepted conditions. Dr. Nazar noted in his February 27, 2009 report that appellant's cervical strain had subjectively not resolved following the accident. Dr. Changaris, the second opinion physician, agreed noting that appellant had multiple injuries related to her employment injuries and that they were still active. Accordingly, referral to Dr. Hughes to resolve a nonexistent conflict with regards to whether there were any continuing residuals was not proper. He did opine that appellant's accepted conditions of cervical strain and closed head injury/postconcussion injury had resolved. Dr. Hughes' was the first physician to reach this conclusion. He opined that appellant had no continuing need for treatment for the accepted conditions. Accordingly, Dr. Hughes' opinion is the basis for the establishment of a conflict. Subsequent to Dr. Hughes' opinion, Dr. Nutter continued to opine that appellant remained disabled as a result of the employment injury. Dr. Brown determined that appellant had residuals from the employment injury. Dr. Fisher, who examined her for a second opinion, opined that a sprain or strain was a soft tissue injury and would have resolved in a matter of a few weeks up to two months after the injury. He also noted that no further treatment was necessary.

Accordingly, there is an unresolved conflict in the medical evidence. Drs. Nutter, Nazar, Changaris and Brown opined that appellant had residuals from her employment injury, whereas Drs. Hughes and Fisher believed that she had no residuals. Because OWCP bears the burden of proof to terminate benefits, the Board will reverse OWCP's hearing representative's decision affirming the termination of benefits.

LEGAL PRECEDENT -- ISSUE 2

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.[8] To establish a causal relationship between the condition claimed, as well as any attendant disability and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background

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[7] *Anna M. Delaney*, 53 ECAB 384 (2002).

[8] *Jaja K. Asaramo*, 55 ECAB 2000 (2004).

supporting such a causal relationship.[9] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[10] Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by rationalized medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[11] Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[12]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant had not established that she suffered from a bilateral shoulder condition causally related to her accepted injury. The Board notes that neither MRI scan showed any evidence of cervical radiculopathy. The second opinion physician, Dr. Changaris, diagnosed appellant with restrictive shoulder disease, as well as restrictive neck disease, headaches and brain injury. His report was sent to Dr. Nazar, who indicated that appellant did not have restrictive shoulder disease. To resolve the conflict between Drs. Nazar and Changaris with regards to appellant's diagnosis, OWCP referred her to Dr. Hughes to serve as an impartial medical examiner, pursuant to 5 U.S.C. § 8123(a). In a well-rationalized report, Dr. Hughes noted that on examination, appellant experienced bilateral shoulder pain and a rather marked restriction in range of motion of both shoulders, left worse than right, for active movement. However, he concluded that she did not sustain a shoulder injury as a result of the accepted employment injury and that, although the cause of her ongoing shoulder problems was not clear they were not attributable to the employment injury. The special weight of the medical evidence is represented by the well-rationalized opinion of Dr. Hughes, the impartial medical examiner, who concluded that appellant's bilateral shoulder condition is not causally related to the September 6, 2008 employment injury.

The record contains medical reports written subsequent to the opinion of Dr. Hughes. None of these medical opinions are sufficient to overcome the well-rationalized opinion of Dr. Hughes. Dr. Nutter indicated that appellant evinced painful shoulder movement within the first month after her injury based on her office records. She indicated that, although appellant did not receive a direct blow to her shoulders, she had no doubt that the ongoing left shoulder and arm pains were a direct consequence of the cervical sprain of the same day. Dr. Nutter's

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[9] *Jennifer Atkerson*, 55 ECAB 317 (2004).

[10] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[11] *Leslie C. Moore*, 52 ECAB 132 (2000).

[12] *Ernest St. Pierre*, 51 ECAB 623 (2000).

opinion is not sufficient to overcome the opinion of Dr. Hughes as Dr. Nutter's opinion amounts to a description of pain and not a clear diagnosis of a medical condition.[13]

In a November 4, 2010 report, Dr. Brown diagnosed appellant with chronic upper arm and shoulder pain and dysfunction and bilateral adhesive capsulitis. He indicated that these conditions arose from her injury of September 6, 2008. Dr. Brown noted that there were no records that suggested a preexisting similar condition and that there has been a marked alteration in appellant's functional status.

OWCP referred Dr. Brown's report to Dr. Fisher for a second opinion. Dr. Fisher also noted restriction of range of motion in each shoulder secondary to pain complaints and muscle tightness. However, he opined that appellant did not have bilateral adhesive capsulitis. Dr. Fisher reasoned that her persistent generalized pain was not due to bilateral adhesive capsulitis which implies fibrosis or scar tissue causing tightening of the capsule and ligaments about the shoulder which was not the case with appellant. He noted that appellant's shoulder motion was due strictly to pain over the bilateral muscles of the shoulder girdles and over the superior aspect of each shoulder. Dr. Fisher's opinion does not support that she had a diagnosed shoulder condition as a consequence of his accepted injury. Although he does note complaints of pain and muscle tightness, he opined that appellant did not have bilateral adhesive capsulitis. Dr. Brown did initially diagnose bilateral adhesive capsulitis. However, his opinions are equivocal, he indicated that it was possible to agree with Dr. Fisher's report regarding the loss of motion in appellant's shoulders. Although Dr. Brown indicated that he would have liked an MRI scan of appellant's shoulders, he also noted that a careful examination by a Board-certified orthopedic surgeon is the typical way in which adhesive capsulitis is diagnosed. Generally, the opinions of Drs. Fisher and Brown indicate that appellant had shoulder pain and the fact that she had shoulder pain would not be sufficient to overcome the opinion of Dr. Hughes.[14]

Therefore, the Board finds that appellant has not met her burden of proof to establish that the claim should be expanded to include a bilateral shoulder condition.

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 improperly terminated appellant's wage-loss compensation and medical benefits effective June 24, 2011. However, the Board further finds that it properly denied expanding appellant's claim to include a bilateral shoulder condition.

[13] *See Lee R. Haywood*, 48 ECAB 145 (1996); *see also P.S.*, Docket No. 12-1601 (issued January 2, 2013). Pain is a general description of a symptoms rather than a firm diagnosis of a medical condition. *K.W.*, Docket No. 12-1590 (issued December 18, 2012).

[14] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 29, 2011 is reversed in part and affirmed in part.

Issued: April 5, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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