United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 13-1126**
	)	**Issued: September 17, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Grand Rapids, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 9, 2013 appellant, through his attorney, filed a timely appeal from a March 7, 2013 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 this case.

ISSUE

The issue is whether OWCP properly terminated appellant's wage-loss compensation benefits effective August 27, 2012.

On appeal, counsel contends that OWCP's decision is contrary to fact and law.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that appellant, then a 59-year-old mail processing clerk, sustained a left shoulder and cervical strain in the performance of duty on October 25, 2009; OWCP File No. xxxxxx323.[2]

Appellant returned to light-duty work and then stopped on January 27, 2010 to undergo a nonemployment-related total right knee replacement. Subsequently, OWCP accepted his claim for an August 27, 2010 recurrence and placed him on the periodic rolls on September 26, 2010 as the employing establishment was unable to provide work within his medical restrictions under the National Reassessment Process (NRP). On July 26, 2011 appellant underwent authorized right shoulder surgery. He has not worked since the January 27, 2010 knee surgery.

In a December 30, 2010 report, Dr. John W. Froggatt, a Board-certified infectious disease specialist, diagnosed delayed-onset infection of right total knee arthroplasty with acute onset of symptoms and uncertain microbial etiology. He also diagnosed recent bronchitis, osteoarthritis, diabetes mellitus and hypertension.

On April 13, 2011 Dr. Ken Edwards, a Board-certified orthopedic surgeon, diagnosed right shoulder supraspinatus tendinitis and impingement and left shoulder supraspinatus tendinitis. Appellant stated that he could no longer work at the employing establishment due to the fact that he had a lot of overhead lifting and sweeping of mail. Upon examination of the left shoulder, Dr. Edwards found negative Yergason, Speed's and apprehension signs. The right shoulder showed well-healed portal sites, good range of motion, exquisite tenderness over the subacromial space, positive impingement signs, crepitus with circumduction motion and negative Yergason and Speed's signs.

OWCP referred appellant for a second opinion evaluation to determine the nature and extent of his employment-related conditions. In a May 11, 2011 report, Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon, reviewed a statement of accepted facts, history of the injury and the medical evidence of record and conducted a physical examination. He found no objective findings that suggested that soft tissue problems existed in the cervical spine. There were no findings to suggest a cervical strain; there was no swelling, no tightness of the muscles of the neck and no swelling of the neck. There was also no swelling of the left shoulder. Appellant had almost a full range of motion of his left shoulder and all of the provocative tests were negative. Dr. Obianwu concluded that appellant's employment-related cervical strain and left shoulder strain had resolved without residuals. He opined that appellant had reached maximum medical improvement and released him to full-duty work without restrictions.

Appellant submitted reports dated November 19, 2010 through November 28, 2011 from Dr. Edwards. On June 22, 2011 Dr. Edwards reviewed Dr. Obianwu's May 11, 2011 report and

[2] OWCP previously accepted that on February 26, 2006 appellant sustained a bilateral wrist sprain and right shoulder sprain under File No. xxxxxx278. It also accepted that on August 1, 2007 he sustained a right shoulder sprain and rotator cuff tear under File No. xxxxxx386. OWCP granted a schedule award for 16 percent permanent impairment of the right upper extremity for the period December 23, 2008 through December 7, 2009. It combined the claims under Master File No. xxxxxx386.

disputed his finding that appellant was fit for duty. He recommended the following restrictions: no reaching; no reaching above shoulder level; no repetitive lifting, pushing or pulling. On November 28, 2011 Dr. Edwards reported that appellant's right shoulder had full forward flexion and abduction with internal rotation. Appellant had a negative drop test and no weakness with external rotation.

On December 29, 2010 Dr. Aurora Madanguit, a Board-certified internist, provided a consultation regarding appellant's postoperative management of medical problems, particularly diabetes, hypertension and septic knee.

In a January 25, 2011 report, Dr. Son Phung, a Board-certified internist, indicated that appellant presented to the emergency room with increased right knee swelling and stiffness and a stat right knee arthrocentesis was performed.

OWCP referred appellant for a second opinion evaluation to determine the nature and extent of his employment-related conditions. In a January 5, 2012 report, Dr. Thomas G. Akre, an osteopath Board-certified in orthopedic surgery, reviewed a statement of accepted facts, history of the injury and the medical evidence of record and conducted a physical examination. He found that the left shoulder had a flexion of 170 degrees, abduction of 170 degrees, extension of 60 degrees, adduction of 40 degrees, it was nontender and had normal biceps contour. The right shoulder had a flexion of 160 degrees, abduction of 140 degrees, total arc of 60 degrees, external rotation of 50 degrees, internal rotation to S1, external rotation with the arm to the side of 45 degrees and palpable step-off on the proximal biceps consistent with the biceps tendon tear. Hawkins' test produced pain in the trapezius along the superior medical border of the scapula and along the medium border of the scapula until T4. Dr. Akre reported that the pain was produced with shoulder movement and was also reproduced with cervical spine compression. The Spurling's test was negative regarding pain radiating down the arm or into the shoulder and was painful to the region of the muscle spasm. Dr. Akre noted a long head biceps tendon tear and a partial rotator cuff tear with some loss of range of motion. Additionally, he noted residual spasm and pain in the right paracervical upper thoracic region consistent with cervical spondylosis with some facet irritation radiating pain and spasm into this region. Dr. Akre reported further, "Specifically regarding his right shoulder partial rotator cuff tear and biceps tendon tear, bilateral wrist and cervical strain he appears to have no significant musculoskeletal problem that would keep him from doing his normal work." The bilateral elbows had full range of motion. The left wrist had 50 degrees of volar flexion, 60 degrees of dorsal flexion and 60 degrees of volar and dorsal flexion on the right. Appellant had a negative Tinel's sign bilaterally and negative carpal and cubital tunnel syndrome bilaterally. Strength was 5 out of 5 with flexion/extension of the elbow and internal/external rotation, superspindous testing at the shoulder. Grip strength was good and full bilaterally. Dr. Akre found that appellant's left and right shoulders were at maximum medical improvement without residuals. He diagnosed cervical degenerative disc disease and opined that it was related to cervical spondylosis and not a specific work injury. Dr. Akre opined that appellant's bilateral wrist condition was at maximum medical improvement with only mild impairment of range of motion on the left. He concluded that appellant's accepted conditions had resolved and explained that his cervical and knee conditions were not employment related.

In a March 30, 2012 addendum report, Dr. Akre further opined that appellant's cervical degenerative disc disease was not a consequential or employment-related injury. He explained that appellant had a left shoulder injury in October 2009 which would not create consequential degenerative changes in the neck in a one-month time period. Thus, the degenerative changes shown in a cervical magnetic resonance imaging (MRI) scan in November 2009 were not consequential injuries. Dr. Akre released appellant to full-duty work.

In an April 4, 2012 report, Dr. Edwards stated that appellant continued to have discomfort with overhead lifting at work. The cervical spine revealed no spinous process or paraspinal tenderness. There was full range of motion to flexion, extension, lateral bending and head tilt. There was no palpable step-off deformity, no obvious instability, normal cervical strength without spasm or atrophy. The drop test was negative and there was no weakness with external rotation, no effusion and no erythema.

By letter dated July 23, 2012, OWCP notified appellant that it proposed to terminate his wage-loss compensation benefits based on the weight of the medical evidence, as represented by Dr. Akre. It allotted 30 days for him to submit additional evidence or argument in disagreement with the proposed action.

By decision dated August 24, 2012, OWCP terminated appellant's wage-loss benefits effective August 27, 2012. It found the weight of the evidence was represented by Dr. Akre.

On August 27, 2012 appellant, through his attorney, requested an oral hearing *via* telephone before an OWCP hearing representative. He submitted a September 7, 2012 report from Dr. Edwards who diagnosed persistent supraspinatus tendinitis of the right shoulder and developing adhesive capsulitis and reiterated his medical opinions.

On December 13, 2012 an oral hearing was held *via* telephone before an OWCP hearing representative who heard appellant's testimony and allotted 30 days for the submission of additional evidence.

By decision dated March 7, 2013, OWCP's hearing representative affirmed the August 24, 2012 termination decision, finding that Dr. Akre represented the weight of the medical evidence.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.[3] 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.[4] OWCP's burden of proof includes the necessity of furnishing

[3] *See S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

[4] *See I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

rationalized medical opinion evidence based on a proper factual and medical background.[5] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[6] To terminate 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]

ANALYSIS

OWCP accepted appellant's claims for bilateral shoulder strain, right rotator cuff tear, cervical strain and bilateral wrist sprain. It terminated his compensation benefits effective August 27, 2012 on the grounds that the accepted employment-related conditions had resolved without active residuals preventing him from working based on the opinion of the second opinion examiner, Dr. Akre. The issue to be determined is whether OWCP met its burden to terminate appellant's compensation benefits.

OWCP referred appellant to Dr. Akre for a second opinion evaluation to determine the nature and extent of his employment-related conditions. The Board finds that it met its burden of proof to terminate appellant's wage-loss compensation benefits based on the January 5 and March 30, 2012 reports of Dr. Akre who reviewed appellant's medical history, examined him and found that he experienced pain as a result of the Hawkins' test, which was reproduced with shoulder movement and with cervical spine compression. The bilateral elbows had full range of motion. Appellant had a negative Tinel's sign bilaterally and negative carpal and cubital tunnel syndrome bilaterally. Strength was 5 out of 5 with flexion/extension of the elbow and internal/external rotation, superspindous testing at the shoulder. Grip strength was good and full bilaterally. Dr. Akre found that appellant's left and right shoulders were at maximum medical improvement. He noted that the right shoulder had a long biceps tendon tear and a partial rotator cuff tear with some loss of range of motion. Dr. Akre diagnosed cervical degenerative disc disease and opined that it was related to cervical spondylosis and not a specific work injury. He opined that appellant's bilateral wrist condition was at maximum medical improvement with only mild impairment of range of motion on the left. Dr. Akre concluded that appellant's accepted conditions had resolved and explained that his cervical and knee conditions were not employment related. He explained that appellant had no significant musculoskeletal problem that would preclude him from performing his work duties. On March 30, 2012 Dr. Akre further opined that appellant's cervical degenerative disc disease was not a consequential or employment-related injury and explained that appellant's left shoulder injury would not create consequential degenerative changes in the neck in a one-month time period.

The Board finds that Dr. Akre's reports represent the weight of the medical evidence at the time OWCP terminated benefits and that OWCP properly relied on his reports in terminating appellant's benefits. The Board finds that he had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Akre is a specialist in the appropriate field.

[5] *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

[6] *See T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

[7] *See James F. Weikel*, 54 ECAB 660 (2003).

His opinion is based on proper factual and medical history and his reports contained a detailed summary of this history. Dr. Akre addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's conditions.[8] At the time benefits were terminated, he found no basis on which to attribute any residuals or continued disability to appellant's accepted conditions. Dr. Akre's opinion as set forth in his January 5 and March 30, 2012 reports is found to be probative evidence and reliable. The Board finds that his opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted conditions.

In his reports, Dr. Edwards diagnosed right shoulder supraspinatus tendinitis and impingement and left shoulder supraspinatus tendinitis and opined that appellant was disabled for work. However, he provided no medical rationale explaining how these conditions were causally related to appellant's federal employment or his accepted conditions and why they rendered him disabled. Thus, Dr. Edwards' reports are of diminished probative value and insufficient to overcome the weight of Dr. Akre's reports or to create a medical conflict.

The reports from Drs. Froggatt, Madanguit and Phung contain no opinion as to whether appellant continues to have residuals from the accepted bilateral shoulder, neck and bilateral wrist conditions. Thus, these reports are insufficient to show that the termination was improper. Accordingly, the Board finds that Dr. Akre's opinion continues to constitute the weight of the medical evidence and supports OWCP's March 7, 2013 decision terminating appellant's wage-loss compensation benefits.

On appeal, counsel contends that OWCP's decision is contrary to fact and law. For the reasons stated above, the Board finds the attorney's argument is not substantiated.

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 properly terminated appellant's wage-loss compensation benefits effective August 27, 2012 on the grounds that his accepted bilateral shoulder, neck and bilateral wrist conditions had ceased.

[8] *See Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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