

FACTUAL HISTORY

On November 14, 2011 appellant, then a 44-year-old medical technician, filed a traumatic injury claim (Form CA-1) alleging that she hurt her right shoulder, arm, hand, and neck as a result of performing her repetitive work duties on that day. On November 15, 2011 she stopped work.

By decision dated February 24, 2012, OWCP denied appellant's claim as she did not submit any medical evidence as requested to establish a diagnosed medical condition causally related to the accepted employment incident.

A February 16, 2012 medical report from Dr. Carolyn M. Sampson, a Board-certified family practitioner, described findings on physical examination, reviewed diagnostic test results, and diagnosed right rotator cuff tear, bursitis, and tendinitis.

On March 6, 2012 OWCP accepted appellant's claim for right shoulder rotator cuff syndrome and allied disorders.

In a May 2, 2012 report, Dr. David Berkoff, Board-certified in emergency medicine, noted appellant's treatment for her right shoulder pain, provided examination findings, and diagnosed a known partial rotator cuff tear at the right supraspinatus with biceps tendinitis and acromioclavicular (AC) arthrosis. He referred appellant for an arthroscopic surgery evaluation.

On September 8, 2012 an OWCP medical adviser reviewed Dr. Berkoff's May 2, 2012 findings and opined that appellant had impingement syndrome with overgrowth at the AC joint that had resisted conservative treatment. The medical adviser recommended authorizing the proposed arthroscopic right shoulder rotator cuff repair and revision of the right collar bone, which were performed on October 9, 2012.

By letter dated October 2, 2012, OWCP expanded the accepted conditions to include right shoulder AC and upper arm sprain. On October 4, 2012 it authorized arthroscopic right rotator cuff repair and right revision of the collar bone that was performed on October 9, 2012.

Appellant remained out of work. On January 15, 2015 OWCP referred her, together with a statement of accepted facts and the medical record, to Dr. Chason S. Hayes, a Board-certified orthopedic surgeon, for a second opinion to determine the extent of her employment-related disability and work capacity.

In an April 10, 2015 report, Dr. Hayes described appellant's history of injury and medical treatment. On physical examination of the cervical spine, he found tenderness with a fairly limited range of motion. Appellant had 70 degrees of flexion, 40 degrees of extension, 45 degrees of right lateral flexion, 40 degrees of left lateral flexion, 80 degrees of right rotation, and 80 degrees of left axial rotation. Dr. Hayes found normal cervical lordosis, no deformity or scoliosis, normal reflexes, normal light touch sensation to both upper extremities, 5/5 right shoulder external rotation, and 5/5 left shoulder external rotation and a normal neurological examination. He reported a normal gait and no surgical scars, skin lesions, lymphangitis, lymphadenopathy, masses, localized swelling, or radial pulse.

On right shoulder examination, Dr. Hayes found no tenderness, clinical deformity, scapular winging, or crepitus. He provided range of motion measurements which included 170 degrees of forward flexion, 170 degrees of abduction, 80 degrees of external rotation, and internal rotation to T10. Dr. Hayes reported negative results for the following tests: impingement, Hawkins, crossed arm, O'Brien, supination, stability, apprehension, load and shift, sulcus sign, lift off, drop arm, Spurling, Spped, and Adson. There was no clinical deformity, scapular winging, massess, swelling, crepitus, or lymphangitis. Muscle strength testing of external and internal rotation, forward elevation, and abduction were each 5/5. Sensation was intact to light touch. Appellant had a well-healed surgical scar. Dr. Hayes diagnosed cervical radicular pain and shoulder pain. He advised that appellant appeared to have some residual symptoms from cervical radicular pain that was probably due to cervical degenerative disc disease. Appellant appeared to have an excellent result status post right shoulder arthroscopy and biceps tenodesis.

Dr. Hayes responded "none" to the question of what objective findings showed that right rotator cuff syndrome of the shoulder injury continued to be medically present and disabling. He responded "yes" that this condition had resolved. Dr. Hayes attributed appellant's prolonged disability to lack of understanding of the workers' compensation process. Appellant was afraid that she may cause additional injuries to her shoulder and neck. She was also fearful of returning to work and having pain. Appellant was severely deconditioned and out of shape. Dr. Hayes related that she continued to have cervical radiculopathy symptoms, but opined that she was capable of performing her regular duties as a medical technician eight hours a day with no restrictions. Appellant was not disabled from work. Dr. Hayes recommended a functional capacity evaluation (FCE) to determine her restrictions as she was severely deconditioned, which could limit her ability to work. He did not anticipate permanent restrictions as appellant was motivated that she could fully return to her preinjury strength and status. Dr. Hayes recommended continued physical therapy and a home traction unit, a magnetic resonance imaging (MRI) scan and possible epidural steroid injection for the cervical spine. He concluded that appellant would reach maximum medical improvement from the November 14, 2011 employment injury after completion of this treatment. In an accompanying work capacity evaluation (Form OWCP-5c), Dr. Hayes indicated that she could perform her usual job eight hours a day with no restrictions.

By notice dated May 13, 2015, OWCP proposed to terminate wage-loss compensation and medical benefits as Dr. Hayes' report found that she had no continuing residuals or disability due to her accepted employment injuries. It afforded appellant 30 days to submit additional evidence or argument regarding the proposed termination.

In letters dated May 20 and June 4, 2015, appellant disagreed with the proposed termination and submitted medical reports. She contended that Dr. Hayes' report was insufficient to meet OWCP's burden to terminate her compensation benefits as his report did not match his examination findings. Appellant asserted that she had pain, numbness, and tightness in her right arm when he asked her to move her arm. After these exercises, Dr. Hayes talked about adjusting to her disability through exercise. He did not perform any other physical tests or examination. Appellant alleged that Dr. Hayes made incorrect statements in his report and did not document her symptoms. She asserted that the OWCP-5c form had expired according to the Office of Management and Budget number on his report dated October 31, 2014.

Appellant submitted a December 17, 2014 FCE report from Dr. R. Alexander Creighton, an attending Board-certified orthopedic surgeon, who found that appellant could perform medium work in a restricted work plan. Her occupation required her to function in a medium category. Dr. Creighton noted the restrictions and determined that, although appellant could function at a medium level, a nursing position in a clinic setting rather than an inpatient setting would place her in a light work category with less stress on her right arm. In a May 27, 2015 work report, he diagnosed status post right shoulder surgery. Dr. Creighton advised that appellant could perform full duty with no restrictions and that she could perform limited overhead lifting and work in a medium category. In a June 2, 2015 report, he diagnosed right shoulder partial thickness rotator cuff tear, superior labral tear, and AC arthritis. Dr. Creighton advised that appellant had reached maximum medical improvement regarding her accepted employment injury and right shoulder surgery. He recommended vocational rehabilitation to return to a medium work category of 40 hours a week.

By decision dated July 2, 2015, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits effective that day. It found that the weight of the medical opinion evidence rested with Dr. Hayes' April 10, 2015 report, which opined that she no longer had any employment-related residuals or disability.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.² It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁵ 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.⁶

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits as of July 2, 2015. OWCP accepted that she sustained right shoulder rotator cuff syndrome, right shoulder allied disorders, and right shoulder AC and upper arm sprain while in the performance of duty on November 14, 2011. It authorized arthroscopic

² *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

³ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁶ *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

right rotator cuff repair and right revision of the collar bone performed on October 4, 2012. OWCP terminated appellant's wage-loss compensation and medical benefits based on the medical opinion of Dr. Hayes, a second opinion physician.

In his April 10, 2015 report, Dr. Hayes described the November 14, 2011 employment injury and reviewed appellant's medical treatment. He provided essentially normal physical and neurological examination findings regarding the cervical spine. Dr. Hayes also found normal findings on examination of the right shoulder. He diagnosed cervical radicular pain and shoulder pain. Dr. Hayes advised that appellant appeared to have some residual symptoms from cervical radicular pain that was probably due to degenerative disc disease in her cervical spine. Appellant appeared to have an excellent result status post right shoulder arthroscopy and biceps tenodesis.

Dr. Hayes opined that appellant's accepted work-related right shoulder rotator cuff syndrome had resolved. He explained that her prolonged disability was due to her lack of understanding of the workers' compensation process. Dr. Hayes noted that appellant was afraid that she could cause additional injuries and pain to her shoulder and neck if she returned to work. He indicated that she was severely deconditioned and out of shape. While Dr. Hayes noted that appellant continued to have symptoms of cervical radiculopathy, this condition has not accepted by OWCP.⁷ He advised that she could perform her regular duties as a medical technician eight hours a day with no restrictions. Dr. Hayes found that appellant had an excellent result status post right shoulder arthroscopy and biceps tenodesis. He recommended a FCE to determine her lifting restrictions because she was severely deconditioned, which could limit her ability to return to work. Dr. Hayes did not anticipate permanent restrictions as appellant was motivated that she could fully return to her preinjury strength and status. He recommended further medical treatment for her current nonaccepted cervical spine condition and advised that she would reach maximum medical improvement of the November 14, 2011 employment injury after completion of this treatment.

The Board finds that Dr. Hayes' report represents the weight of the medical evidence and that OWCP properly relied on his report in terminating appellant's wage-loss compensation and medical benefits for the accepted condition on July 2, 2015. Dr. Hayes' opinion is based on a proper factual and medical history as he reviewed the statements of accepted facts and her prior medical treatment. He also related his comprehensive examination findings in support of his opinion that appellant no longer had any residuals or disability causally related to the accepted traumatic right shoulder and right arm injuries.

The Board finds that Dr. Hayes' opinion that appellant had recovered from the employment injuries represents the weight of the medical evidence and the additional medical evidence submitted is insufficient to create a conflict in opinion regarding whether she had continuing residuals or disability related to the accepted injuries. Therefore, OWCP properly terminated her compensation effective July 2, 2015 based on his opinion.

⁷ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (for conditions not accepted or approved by OWCP as due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury).

The Board finds that the remaining evidence submitted by appellant prior to the termination of her compensation is insufficient to show that she had any remaining work-related residuals or disability. Dr. Creighton's reports agreed that she had reached maximum medical improvement regarding her November 14, 2011 employment injuries and that she could return to full-time, medium-level work. He did not opine that appellant had any continuing residuals or disability due to her accepted employment injuries. While Dr. Creighton diagnosed right shoulder partial thickness rotator cuff tear, superior labral tear, and AC arthritis, he did not attribute the diagnosed conditions to the accepted employment injuries.

The Board finds that Dr. Hayes' opinion that appellant had recovered from the employment injuries represents the weight of the medical evidence and the additional medical evidence submitted is insufficient to create a conflict in opinion regarding whether she had continuing residuals or disability related to the accepted injuries. Therefore, OWCP properly terminated her compensation effective July 2, 2015 based on his opinion.

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 and medical benefits effective July 2, 2015 as she no longer had any residuals or disability causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 24, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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