United States Department of Labor
Employees' Compensation Appeals Board

K.N., Appellant	)	
and	)	**Docket No. 16-1735**
	)	**Issued: February 8, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Eagleville, PA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 30, 2016 appellant, through counsel, filed a timely appeal from March 22 and June 20, 2016 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 wage-loss compensation and medical benefits on September 6, 2012 because he no longer had

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

residuals of the accepted right shoulder strain; and (2) whether appellant established that he had any continuing employment-related disability or condition after September 6, 2012 due to the accepted conditions.

On appeal counsel asserts that the evidence showing causation was not properly considered.

FACTUAL HISTORY

On March 7, 2011 appellant, then a 52-year-old transitional city carrier, filed an occupational disease claim (Form CA-2) alleging that repetitive motion and carrying a mailbag for 11½ months injured his right shoulder. He stopped work on March 2, 2011. On June 7, 2011 OWCP accepted right shoulder strain, and appellant received wage-loss compensation.

Dr. David D. Raab, a treating Board-certified osteopath specializing in orthopedic surgery, first examined appellant on February 9, 2011. At that time he reported a history that appellant presented with increasing pain and irritation in his right shoulder that occurred on a fairly acute basis approximately one week previously. Dr. Raab reported that appellant had pain with overhead activity, pushing, and pulling. He diagnosed acute rotator cuff bursitis tendinitis.

A June 10, 2011 magnetic resonance imaging (MRI) scan of the right shoulder demonstrated glenohumeral effusion, supraspinatus and infraspinatus tendinosis, mild degenerative acromioclavicular (AC) joint osteoarthritis, and no rotator cuff tear. On July 27, 2011 Dr. Raab noted his review of the MRI scan. Right shoulder examination demonstrated a positive impingement sign on examination and AC joint tenderness. Dr. Raab diagnosed symptomatic tendinitis of the right shoulder and capsulitis AC joint arthritis. He advised that appellant could not work.

Appellant's term appointment with the employing establishment expired on November 3, 2011.

Dr. Raab continued to see appellant on a monthly basis through December 21, 2011. On December 21, 2011 he noted that appellant continued to have tenderness over the right shoulder AC joint with full active and passive range of motion. Dr. Raab diagnosed symptomatic degenerative joint disease of the AC joint of the right shoulder.

In January 2012 OWCP referred appellant to Dr. Steven J. Valentino, a Board-certified osteopath specializing in orthopedic surgery, for a second-opinion evaluation. In a February 28, 2012 report, he noted his review of the statement of accepted facts (SOAF) and medical record, including the June 10, 2011 MRI scan, and appellant's complaint of right shoulder achiness. Examination of both shoulders revealed full range of motion, both active, and passive. Impingement, instability and sulcus testing was negative, and examination of the rotator cuff, glenohumeral articulation, labrum, AC joint, sternoclavicular joint, clavicle, and subclavicular region was normal. Speed's test, crossed abduction sign, Neer sign, and Hawkins sign were negative. Dr. Valentino diagnosed resolved right shoulder sprain. He commented that, based on his examination, the sprain had fully resolved without residual, advising that the MRI scan findings were degenerative and mild and were not related to appellant's employment injury.

Dr. Valentino concluded that appellant did not need ongoing supervised medical care for his employment-related shoulder injury, and had no physical limits regarding this.

By letter dated April 9, 2012, OWCP forwarded Dr. Valentino's report to Dr. Raab and asked for his comments.

On June 1, 2012 OWCP proposed to terminate appellant's wage-loss and medical benefits. It found that the weight of the medical opinion evidence rested with the opinion of Dr. Valentino who advised that the employment-related right shoulder strain had resolved without residuals, and that appellant needed no further treatment for the accepted strain and could return to work.

In response, appellant forwarded medical evidence previously of record and a June 7, 2012 treatment note of Dr. Raab. Dr. Raab reported a history that appellant had injured his right shoulder 14 months previously at work, noting work activity of repetitive shoulder motion, overhead reaching, repetitive lifting, repetitive pushing, and prolonged shoulder use. He described appellant's complaints of right shoulder pain that radiated into his right arm. Dr. Raab diagnosed rotator cuff syndrome and shoulder osteoarthrosis.

In a September 6, 2012 decision, OWCP terminated appellant's wage-loss and medical benefits, effective that day. It found that the weight of the medical evidence rested with the opinion of Dr. Valentino.

Appellant, through counsel,[3] requested a hearing before OWCP's Branch of Hearings and Review. In a treatment note dated October 1, 2012, Dr. Raab repeated the history he reported on June 7, 2012. Physical examination of the right shoulder demonstrated no tenderness and no limitation of range of motion except that internal rotation was to T-10. All tests were negative. Dr. Raab reiterated his diagnoses of rotator cuff syndrome and shoulder osteoarthrosis.

At the hearing, held on December 4, 2012, appellant testified that he had worked off and on at the employing establishment since 1981, especially during the holidays, beginning as a mail handler. He indicated that he continued to have shoulder pain and decreased shoulder range of motion. The record was held open for 30 days.

By decision dated February 11, 2013, an OWCP hearing representative affirmed the September 6, 2012 decision. She noted that Dr. Raab diagnosed conditions that had not been accepted and gave no explanation as to how these diagnoses were related to appellant's Federal employment.

Appellant, through counsel, requested reconsideration on June 10, 2013. He submitted an April 18, 2013 report in which Dr. Raab noted that appellant's shoulder problem was a work-related injury. Right shoulder examination demonstrated no tenderness, no limitations on range of motion except internal rotation was to T-10, and no weakness. Resisted ER, Hawkin's, Neer, Speed's, Obrien's, and empty can tests were positive. Lift-off, anterior apprehension, and

[3] At this time appellant was represented by Aaron B. Aumiller, Esquire.

posterior apprehension tests were negative. Dr. Raab diagnosed rotator cuff syndrome and AC joint derangement.

In a merit decision dated October 6, 2014, OWCP found Dr. Raab's April 18, 2013 report of diminished probative value and insufficient to warrant modification of the prior decision. Appellant did not receive this decision as it was mailed to an incorrect address. The October 6, 2014 decision was reissued on March 11, 2015.

On February 15, 2016 counsel[4] requested reconsideration. In support of the request, he submitted a January 27, 2016 report in which Dr. Rahul Kapur, Board-certified in family medicine and sports medicine, noted having seen appellant since "July 21, 2016" [sic] for right shoulder pain that began in 2011, related to his work at the employing establishment. Dr. Kapur advised that, based on an August 14, 2015 musculoskeletal ultrasound, the current diagnosis was adhesive capsulitis and mild rotator cuff tendinopathy. He opined that the main risk factor for developing adhesive capsulitis was immobilization of the shoulder and noted appellant's report that he had guarded and limited shoulder motion since the 2011 employment injury. Dr. Kapur concluded, "If it has been determined that the original strain was work related, and there is documentation from his care providers that he continued to have pain and guarded motion due to this pain, then it is reasonable to say that [appellant's] original work-related injury contributed to his ongoing shoulder pathology."

In a merit decision dated March 22, 2016, OWCP found Dr. Kapur's report contained insufficient rationale and denied modification of the prior decisions.

Appellant, through counsel, next requested reconsideration on May 23, 2016. In a February 12, 2016 report, Dr. Raab advised that he had read Dr. Valentino's report. He opined, "Within a reasonable degree of medical certainty, [appellant] sustained a work[-]related injury to his right shoulder that has resulted in an exacerbation of degenerative changes of his right shoulder leading to chronic pain, weakness, and limitations in activities of daily living. His program of home exercises, ibuprofen, and restricted activities is appropriate and medically necessary. Due to the chronic nature of his injury and continued discomfort with activities of daily living, I anticipate [appellant] will have a permanent disability as a result of the injury."

In a June 20, 2016 merit decision, OWCP denied modification of the prior decisions. It found that Dr. Raab had failed to sufficiently explain how work factors resulted total disability due to appellant's accepted conditions. OWCP concluded that the weight of the medical evidence continued to rest with the opinion of Dr. Valentino.

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.[5]

[4] Appellant was now represented by current counsel.

[5] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

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.[6]

ANALYSIS -- ISSUE 1

OWCP accepted appellant's occupational disease claim for right shoulder strain. It terminated his wage-loss compensation and medical benefits on September 6, 2012, based on the opinion of Dr. Valentino, an OWCP referral physician.

The medical evidence relevant to the September 6, 2012 termination included Dr. Valentino's February 28, 2012 report. Dr. Valentino noted his review of the SOAF and medical record. He described appellant's complaints of right shoulder achiness. Right shoulder examination revealed full range of motion with negative impingement, instability, and sulcus tests. Examination of the rotator cuff, glenohumeral articulation, labrum, AC joint, sternoclavicular joint, clavicle, and subclavicular region was normal. Speed's test, crossed abduction sign, Neer sign, and Hawkins sign were negative. Dr. Valentino commented that, based on his examination, the right shoulder strain had fully resolved without residual. He concluded that appellant did not need further medical care for the right shoulder strain and had no restrictions based on the employment injury.

Dr. Raab, an attending physician, advised on December 21, 2011 that appellant continued to have tenderness over the AC joint with full active and passive right shoulder range of motion. He diagnosed symptomatic degenerative joint disease of the AC joint of the right shoulder. In his June 7, 2012 report, Dr. Raab noted appellant's complaints of right shoulder pain that radiated into his right arm, and diagnosed rotator cuff syndrome and shoulder osteoarthrosis.

The Board finds that OWCP properly relied on Dr. Valentino's opinion in terminating appellant's wage-loss compensation and medical benefits on September 6, 2012. Dr. Valentino had full knowledge of the relevant facts, and his opinion was based on proper factual and medical history. He described examination findings. At the time benefits were terminated, Dr. Valentino found no basis on which to attribute any residuals or continued disability to appellant's accepted right shoulder strain. His opinion is found to be probative and reliable and sufficient to justify OWCP's termination of benefits for the accepted conditions.[7]

The Board finds that Dr. Raab's opinion is insufficient to establish a conflict in medical evidence with the well-rationalized opinion of Dr. Valentino. Dr. Raab initially provided a history that increasing pain and irritation in appellant's right shoulder occurred on a fairly acute basis approximately one week previously. On June 7, 2012 he reported a different history, that appellant injured his right shoulder 14 months previously at work, and noted work activity of

[6] *Id.*

[7] *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).

repetitive shoulder motion, overhead reaching, repetitive lifting, repetitive pushing, and prolonged shoulder use.

OWCP therefore met its burden of proof to terminate appellant's wage-loss compensation and medical benefits on September 6, 2012.[8]

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate wage-loss compensation on September 9, 2012, the burden of proof shifted to appellant to establish any continuing disability causally related to the accepted right shoulder strain.[9] Causal relationship is a medical issue. 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 medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10]

ANALYSIS -- ISSUE 2

The Board finds that appellant failed to establish continuing residuals or disability relating to the accepted right shoulder strain on or after September 6, 2012.

Subsequent to the termination of benefits appellant submitted reports from Dr. Raab dated October 1, 2012, April 18, 2013, and February 12, 2016. In the October 1, 2012 treatment note, Dr. Raab repeated that the right shoulder examination demonstrated no tenderness and no limitations of range of motion except internal rotation to T-10. All tests were negative. Dr. Raab reiterated his diagnoses of rotator cuff syndrome and shoulder osteoarthrosis. On April 18, 2013 he noted that appellant's shoulder problem was a work-related injury. Right shoulder examination demonstrated no tenderness, no limitations on range of motion except internal rotation to T-10, and no weakness. Resisted ER, Hawkin's, Neer, Speed's, Obrien's, and empty can tests were positive. Lift-off, anterior apprehension, and posterior apprehension tests were negative. Dr. Raab diagnosed rotator cuff syndrome and AC joint derangement.

Dr. Raab did not explain why appellant's tests results changed so significantly in the six months between these two reports. Moreover, the conditions of rotator cuff syndrome, shoulder osteoarthrosis, and AC joint derangement have not been accepted. While Dr. Raab opined on February 12, 2016 that, within a reasonable degree of medical certainty, appellant's right shoulder employment injury resulted in an exacerbation of degenerative changes of his right shoulder leading to chronic pain, weakness, and limitations in activities of daily living and that he anticipated that appellant would have permanent disability as a result of the injury, the physician did not exhibit any knowledge of appellant's specific work history or specific activities of the letter carrier position or explain the disease process that led to his current diagnoses.

[8] *Supra* note 5.

[9] *See Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

[10] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

The Board has long held that medical opinions not containing rationale on causal relation are of diminished probative value and are generally insufficient to meet appellant's burden of proof.[11] The Board finds that Dr. Raab's opinion of insufficient probative value on the issue of whether appellant had any continuing disability after September 12, 2012 due to the accepted right shoulder strain.

As to Dr. Kapur's January 27, 2016 report, it was rendered almost five years after appellant stopped work at the employing establishment. He referenced an August 14, 2015 ultrasound study that is not found in the case record. Moreover, while Dr. Kapur noted appellant's report that he had been limited in moving his right shoulder since 2011. Dr. Raab reported on December 11, 2011 that appellant had full range of motion of the right shoulder, as did Dr. Valentino on February 28, 2012. In his report of June 7, 2012, he provided no physical examination findings. It was not until October 2, 2012 that Dr. Raab reported restricted right shoulder motion, and then only in the internal rotation maneuver. Thus, Dr. Kapur's conclusion regarding the possibility of restricted motion is not supported by the record. Also, he exhibited no knowledge of appellant's employment history or specific job duties. Dr. Kapur's opinion is insufficient to establish continuing disability.

The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical 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.[12] Contrary to counsel's assertion on appeal, there is no medical evidence of record of sufficient rationale to establish that appellant continued to be disabled due to the accepted right shoulder strain. Appellant therefore did not meet his burden of proof to establish that he continued to be disabled after September 6, 2012 due to the accepted right shoulder strain.

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 September 6, 2012 because he no longer had residuals of the accepted right shoulder strain, and that he did not establish that he had a continuing employment-related condition or disability after September 6, 2012 due to the accepted condition.

[11] *Carolyn F. Allen*, 47 ECAB 240 (1995).

[12] *Nicolette R. Kelstrom*, 54 ECAB 570 (2003).

ORDER

IT IS HEREBY ORDERED THAT the June 20 and March 22, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 8, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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