

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

M.L., Appellant)	
)	
and)	Docket No. 20-1682
)	Issued: June 24, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Bloomington, IN, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On September 23, 2020 appellant filed a timely appeal from a March 31, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (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 properly terminated appellant's wage-loss compensation and medical benefits, effective February 5, 2017, as she no longer had disability or residuals causally related to her accepted November 29, 2015 employment injury; and (2) whether

¹ The Board notes that, following the March 31, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

² 5 U.S.C. § 8101 *et seq.*

appellant has met her burden of proof to establish continuing employment-related disability or residuals on or after February 5, 2017 due to her accepted employment injury.

FACTUAL HISTORY

On November 30, 2015 appellant, then a 35-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on November 29, 2015 she strained the right side of her neck when unloading mail from all-purpose containers (APCs) while in the performance of duty. OWCP accepted the claim for a strain of an unspecified muscle, fascia, and tendon at the right shoulder and upper arm level, and a strain of a muscle, fascia, and tendon of the neck.³ It paid appellant wage-loss compensation on the supplemental rolls beginning January 14, 2016 and on the periodic rolls effective July 24, 2016.

A magnetic resonance imaging (MRI) scan of the right shoulder, obtained on December 17, 2015, demonstrated normal findings. A January 20, 2016 MRI scan of the cervical spine also demonstrated normal findings.

On July 6, 2016 OWCP referred appellant to Dr. Norman Mindrebo, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated August 4, 2016, Dr. Mindrebo reviewed appellant's history of a November 29, 2015 employment injury. He noted that MRI scans of the shoulder and cervical spine were normal. On examination Dr. Mindrebo found no muscle spasm of the spine or shoulders, no motor deficit or loss of strength of the upper extremities, and no signs of shoulder instability. He opined that appellant could resume her usual employment without restrictions and asserted that the accepted conditions of a cervical and shoulder strain had resolved.

On August 18, 2016 OWCP requested that Dr. William Schmalz, an internist serving as appellant's treating physician, review Dr. Mindrebo's report and address whether appellant could resume her usual employment.

In a work capacity evaluation dated August 24, 2016, Dr. Schmalz found that appellant could work for eight hours per day with restrictions, including no pushing, pulling, or lifting.

On September 1, 2016 OWCP requested that Dr. Schmalz address why appellant had continued restrictions due to her accepted neck and right shoulder strain.

In a report dated September 14, 2016, Dr. Schmalz advised that appellant had been unable to work subsequent to a November 29, 2015 employment injury to her posterior and lateral neck and posterior shoulder and scapula. He diagnosed a sprain/strain, myositis, myospasm, neuritis, neuralgia, and a myofascial injury. Dr. Schmalz opined that appellant was permanently disabled from work as a result of her date-of-injury position.

³ By decision dated January 14, 2016, OWCP denied appellant's traumatic injury claim, finding that she had not established a condition causally related to the accepted employment incident. By decision dated May 19, 2016, an OWCP hearing representative reversed the January 14, 2016 decision and accepted the claim for right shoulder and neck strains.

OWCP determined that a conflict existed between Dr. Schmalz and Dr. Mindrebo regarding whether appellant had continued disability and residuals of her accepted employment injury. It referred her to Dr. John K. Schneider, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated December 8, 2016, Dr. Schneider discussed appellant's history of injury, her current complaints of neck and right shoulder pain, and noted his review of the medical evidence of record. On physical examination he found pain behaviors and a marked loss of grip strength on the right versus the left inconsistent with examination findings. Dr. Schneider found no muscle spasm of the paracervical region and negative impingement tests of the shoulder or muscle atrophy. He noted that MRI scans obtained after the injury were normal. Dr. Schneider determined that appellant had sustained a soft tissue strain injury rather than a structural injury due to the November 29, 2015 employment injury. He opined that she could resume her usual employment without restrictions.

On December 19, 2016 OWCP notified appellant of its proposed termination of her wage-loss compensation and medical benefits as the weight of the evidence established that she no longer had any employment-related residuals or disability due to her accepted employment injury. It afforded her 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

Thereafter, OWCP received a January 5, 2017 progress report from Dr. Schmalz, who noted that appellant had muscle spasms and pain and was "exhibiting an asymmetry of her shoulders due to this neuromuscular pain and spasms." Dr. Schmalz found that she was unable to perform her usual employment. In a November 22, 2016 progress report, he noted that soft tissue injuries were not visible on diagnostic studies.

In a report dated January 26, 2017, Dr. Gary L. Gettelfinger, a Board-certified anesthesiologist, related that he had previously evaluated appellant for myofascial pain. On physical examination he found that she had a fairly severe winged scapula causing right shoulder laxity. Dr. Gettelfinger related, "I believe this has been missed by more than one provider and it is causing [appellant's] pain with her RUE [right upper extremity] motion. I also believe it could be from her [employing establishment] job with that repetitive motion and heavy weight she was doing that she relates to her original injury."

By decision dated February 1, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits, effective February 5, 2017. It found that Dr. Schneider's opinion as the impartial medical examiner (IME) represented the special weight of the evidence and established that she had no further disability or residuals of her accepted employment injury.

On March 2, 2017 appellant requested a review of the written record. She noted that she had been diagnosed with a winged scapula.

In a report dated March 2, 2017, Dr. Gettelfinger related that he had initially evaluated appellant on February 23, 2016 for headaches and pain in her neck and right shoulder after a November 29, 2015 injury. He noted that MRI scans were normal and that he had diagnosed greater occipital neuralgia and myofascial pain syndrome. Dr. Gettelfinger advised that he had

not concentrated on her right shoulder at the time of his evaluation. He subsequently evaluated appellant on January 26, 2017 for continued right shoulder pain. Dr. Gettelfinger asserted that on examination he had found a winged scapula on the right. He found that she had “shoulder pain with scapulothoracic dysfunction” and that he believed that the November 29, 2015 injury could “explain her current problem because she had none of this pain and problem beforehand.”

By decision dated April 26, 2017, OWCP denied appellant’s request for a review of the written record as untimely under 5 U.S.C. § 8124(b). It considered whether to grant a discretionary hearing and determined that the matter could equally well be addressed through the reconsideration process.

Thereafter, OWCP received a February 22, 2017 report from Dr. Schmalz. Dr. Schmalz advised that appellant had “debility and disability as she has winged scapula and severe pain with attempted motion of the right shoulder girdle....” He noted that she walked with a right-sided limp trying to protect the injured area.

An electromyogram (EMG) performed on June 12, 2017 showed abnormalities consisted with “a mild-to-moderate long thoracic neuropathy on the right.”

In a report dated June 15, 2017, Dr. Susan E. Mackinnon, a Board-certified neurosurgeon, advised that appellant had “marked winging of the right scapula, especially with forward shoulder flexion.” She opined that she believed that appellant’s long thoracic nerve problem had caused “weakness in the middle and lower trapezius and serratus anterior muscles especially.” Dr. Mackinnon recommended physical therapy.

On June 29, 2017 appellant described her problems following her employment injury. On August 16, 2017 she requested reconsideration.

Subsequently, OWCP received progress reports dated January 20 and February 1 and 22, 2017 from Dr. Schmalz. In a February 1, 2017 report, Dr. Schmalz advised that appellant had a “flailing right winged scapula due to injury in her muscles and nerve endings,” which was not a detectable diagnosis on the MRI scan. On February 22, 2017 he advised that her winged right scapula was objective evidence of her work injury and disability. Dr. Schmalz noted that appellant was scheduled for a second EMG.

By decision dated May 2, 2018, OWCP denied modification of its February 1, 2017 decision.

Thereafter, appellant submitted progress reports from Dr. Schmalz dated September 18, 2017. Dr. Schmalz indicated that she had a loss of feeling and strength in her right hand and some loss of right leg strength and sensation.

The employing establishment, on September 19, 2018, advised OWCP that appellant had retired on disability, effective July 16, 2018.⁴

On October 4, 2018 Dr. Gettelfinger noted that appellant sustained an injury on November 29, 2015 due to repetitive pulling and lifting heavy boxes. He related, “This activity can definitely damage the long thoracic nerve and was the cause of this injury.” Dr. Gettelfinger found that the physical examination findings, EMG, and appellant’s winged scapula established that she had a long thoracic nerve injury. He opined, “She now has further shoulder and musculoskeletal dysfunction and pain in her spine because of over compensation for her damaged nerve and serratus anterior.”

On October 30, 2018 appellant requested reconsideration. She submitted a September 17, 2018 report from a physical therapist.

By decision dated January 25, 2019, OWCP denied modification of its May 2, 2018 decision.

In a report dated February 19, 2019, Dr. Jerry Powell, Board-certified in family practice, obtained a history of appellant sustaining an injury on November 29, 2015 attempting to move APCs over the lip of a dock plate. On physical examination he found reduced sensation of the right upper extremity and cervical, thoracic, and right shoulder spasm and tenderness. Dr. Powell advised that x-rays of the cervical spine revealed a loss of lordotic curve, cervical hypolordosis with facet jamming at C4, and osteoarthritis spurring at C2 to 6. He related that appellant’s lifting of the APCs had caused a cervical and thoracic spine strain that had resulted in “mild-to-moderate long thoracic neuropathy on the right resulting in denervation and atrophy of the right serratus anterior muscle as demonstrated on her EMG performed on June 12, 2017, and precipitating osteoarthritis in the cervical spine as demonstrated on x-ray taken February 19, 2019” due to appellant performing her employment duties on November 29, 2015. Dr. Powell diagnosed a strain of the muscle and tendon of the back wall of the thorax, cervical strain, cervical spondylosis with myelopathy, long thoracic neuropathy on the right, and muscle atrophy of the right serratus muscle.

On March 4, 2019 appellant requested reconsideration.

By decision dated May 23, 2019, OWCP denied modification of its January 25, 2019 decision.

In a report dated December 12, 2019, Dr. Gettelfinger indicated the appellant had sustained an injury at work on November 29, 2015. He noted that Dr. Schneider had determined that the objective studies were normal, but opined that appellant could have a damaged long thoracic nerve with normal MRI scans. Dr. Gettelfinger advised that he had witnessed appellant’s deterioration “due to her involuntary muscle substitution.” He related, “In my professional opinion, the physical and diagnostic findings are consistent with the history of the injury, with no evidence of

⁴ On July 13, 2018 the Office of Personnel Management approved appellant’s application for disability retirement, finding that she was disabled due to her winged scapula with scapulothoracic dysfunction.

contributing factors and causally related to the event on November 29, 2015.” Dr. Gettelfinger indicated that the diagnosis had been missed initially.

On March 24, 2020 Dr. John D. Ayres, a Board-certified internist, performed a review of the medical evidence. He noted that Dr. Schneider’s finding of limited shoulder abduction was consistent with serratus anterior palsy. Dr. Ayers indicated that Dr. Schneider had failed to test for a winged scapula. He related that the “EMG findings support chronic injury to the nerve indicating the injury predates the referee examination. Certain findings consistent with this diagnosis were present and documented in Dr. Schneider’s report. However, the possibility of serratus anterior dysfunction as the root cause of her upper extremity limitations and pain was apparently not further assessed.” Dr. Ayers found that appellant had “an unequivocally diagnosed injury to the right serratus anterior muscle and long thoracic nerve.” He attributed the diagnosed condition to the November 29, 2015 employment injury, noting that the injury was consistent with the described employment incident.

On March 25, 2020 appellant requested reconsideration. She asserted that her work injury had caused “denervation in the right serratus anterior muscle and associated neuropathic abnormalities in the right long thoracic nerve,” which had not been diagnosed promptly.

By decision dated March 31, 2020, OWCP denied modification of its February 1, 2017 decision.

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.⁵ 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.⁶ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁸ 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.⁹

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a

⁵ *R.H.*, Docket No. 19-1064 (issued October 9, 2020); *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

⁶ *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁷ *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

⁸ *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

⁹ *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

third physician who shall make an examination.¹⁰ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.¹¹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective February 5, 2017, as she no longer had disability or residuals causally related to her accepted November 29, 2015 employment injury.

OWCP properly determined that a conflict arose between Dr. Schmalz, appellant's physician, and Dr. Mindrebo, an OWCP referral physician, regarding whether she had continuing disability due to her November 29, 2015 employment injury, accepted for strains of the neck and right shoulder. In order to resolve the conflict, it referred her to Dr. Schneider, a Board-certified orthopedic surgeon, for an impartial medical examination, pursuant to 5 U.S.C. § 8123(a).

The Board finds that the weight of the evidence is represented by the thorough and well-rationalized opinion of Dr. Schneider, the IME selected to resolve the conflict in medical opinion.¹² In a December 8, 2016 report, Dr. Schneider discussed appellant's complaints of neck and right shoulder pain, reviewed her history of injury, and indicated that he had analyzed the medical evidence of record. He found a negative impingement tests of the shoulder, no muscle atrophy, and no muscle spasm of the paracervical region. Dr. Schneider further found a marked variance in grip strength on the right versus the left, which he advised was inconsistent with his examination. He noted that MRI scans performed after the injury had yielded normal findings. Dr. Schneider opined that appellant's soft tissue strains of the neck and right shoulder had resolved based on the lack of objective findings on examination. He asserted that she could resume her usual employment without restrictions. Dr. Schneider provided a thorough factual and medical history and accurately summarized the relevant medical evidence.¹³ He provided rationale for his opinion by explaining that appellant's findings on examination demonstrated pain behaviors and that the diagnostic studies showed no structural abnormalities. Dr. Schneider reached a reasoned conclusion regarding appellant's employment-related disability and need for further medical treatment. His opinion, thus, represents the special weight of the evidence and establishes that she had no further disability or residuals causally related to her November 29, 2015 employment injury.¹⁴

The additional evidence submitted prior to OWCP's termination of appellant's compensation is insufficient to overcome the special weight afforded to Dr. Schneider as the IME.

¹⁰ 5 U.S.C. § 8123(a); *L.T.*, Docket No. 18-0797 (issued March 14, 2019); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

¹¹ *D.B.*, Docket No. 19-0663 (issued August 27, 2020).

¹² *R.P.*, Docket No. 19-0057 (issued May 16, 2019).

¹³ *M.R.*, Docket No. 19-0518 (issued September 12, 2019); *A.G.*, Docket No. 19-0113 (issued July 12, 2019).

¹⁴ *A.M.*, Docket No. 18-1243 (issued October 7, 2019); *J.K.*, Docket No. 18-1250 (issued June 25, 2019).

Appellant submitted November 22, 2016 and January 5, 2017 progress reports from Dr. Schmalz, who found that she was unable to perform her usual employment and diagnosed soft tissue injuries. These progress reports predated the report of the IME. Additionally, Dr. Schmalz was on one side of the conflict regarding whether appellant had continued employment-related disability or residuals. Reports from a physician who was on one side of a medical conflict resolved by an IME are generally insufficient to overcome the special weight accorded to the opinion of the IME.¹⁵

In a report dated January 26, 2017, Dr. Gettelfinger found that appellant had a winged scapula resulting in right shoulder laxity. He related that providers had missed the diagnosis and that it was the reason for her pain moving to the right upper extremity. Dr. Gettelfinger advised that repetitive motion performed at the time of her original injury could have resulted in the condition. His opinion that the accepted employment injury could have caused appellant's right winged scapula is, however, speculative in nature and, thus, of diminished probative value.¹⁶

The Board, therefore, finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective February 5, 2017, as she no longer had residuals or disability causally related to her accepted November 29, 2015 employment injury

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates a claimant's compensation benefits, he or she has the burden of proof to establish continuing disability after that date related to the accepted injury.¹⁷ To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.¹⁸

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.¹⁹ To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such causal relationship.²⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical

¹⁵ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *I.J.*, 59 ECAB 408 (2008).

¹⁶ *See T.M.*, Docket No. 18-1418 (issued February 7, 2019); *S.S.*, Docket No. 17-0781 (issued August 1, 2018).

¹⁷ *L.S.*, Docket No. 20-0570 (issued December 15, 2020); *V.G.*, Docket No. 17-0583 (issued July 23, 2018).

¹⁸ *See S.M.*, Docket No. 18-0673 (issued January 25, 2019); *C.L.*, Docket No. 18-1379 (issued February 3, 2019).

¹⁹ *See O.S.*, Docket No. 18-1549 (issued February 7, 2019); *T.F.*, Docket No. 17-0645 (issued August 15, 2018).

²⁰ *S.A.*, Docket No. 18-0399 (issued October 16, 2018).

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.²¹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing employment-related disability or residuals on or after February 5, 2017 due to her accepted employment injury.

Subsequent to OWCP's termination of her wage-loss compensation, appellant submitted reports from physicians finding that she had a right winged scapula, or long thoracic nerve damage. In a progress report dated February 1, 2017, Dr. Schmalz diagnosed a right winged scapula due to a muscle and nerve injury. On February 22, 2017 Dr. Schmalz indicated that the right winged scapula showed objective evidence of disability due to her work injury. OWCP, however, has only accepted appellant's claim for a strain of an unspecified muscle, fascia, and tendon at the right shoulder and upper arm level, and a strain of a muscle, fascia, and tendon of the neck. Dr. Schmalz did not specifically address how any continuing disability was causally related to the accepted employment-related conditions and, thus, his opinion is insufficient to meet appellant's burden of proof.²²

On March 2, 2017 Dr. Gettelfinger diagnosed a winged scapula on the right side, which he found could be related to appellant's November 29, 2015 employment injury. In a report dated October 4, 2018, he diagnosed damage to the long thoracic nerve due to her accepted work injury. On December 12, 2019 Dr. Gettelfinger found that appellant's condition had worsened from involuntary muscle substitution and advised that physicians had initially missed the damage to her long thoracic nerve. He did not, however, address the relevant issue of whether appellant had continued disability due to the accepted conditions of a strain of the right shoulder and neck. Consequently, Dr. Gettelfinger's reports are insufficient to meet her burden of proof.²³

On June 15, 2017 Dr. MacKinnon diagnosed a long thoracic nerve problem. On February 19, 2019 Dr. Powell diagnosed a strain of the muscle and tendon of the back wall of the thorax, cervical strain, cervical spondylosis with myelopathy, long thoracic neuropathy on the right, and muscle atrophy of the right serratus muscle. In a March 24, 2020 report, Dr. Ayres diagnosed a right serratus anterior muscle and long thoracic nerve injury causally related to the accepted November 29, 2015 employment injury. The physicians failed to address the relevant issue of whether appellant had continued disability or need for medical treatment after February 5, 2017 due to her accepted strain of the muscle and tendon of the back wall of the thorax, cervical strain, cervical spondylosis with myelopathy, long thoracic neuropathy on the right, and muscle atrophy of the right serratus muscle.²⁴ Consequently, the reports from Dr. MacKinnon, Dr. Powell,

²¹ *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

²² *See K.E.*, Docket No. 17-1216 (issued February 22, 2018).

²³ *Id.*

²⁴ *See M.M.*, Docket No. 19-0061 (issued November 21, 2019).

and Dr. Ayers are insufficient to meet her burden of proof to establish continuing residuals or disability.

The Board, thus, finds that appellant has not met her burden of proof to establish continuing residuals or disability due to her accepted conditions.²⁵

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 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 February 5, 2017, as she no longer had residuals or disability causally related to her accepted November 29, 2015 employment injury. The Board further finds that appellant has not met her burden of proof to establish continuing employment-related disability or residuals on or after February 5, 2017 due to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 24, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

²⁵ The Board notes that OWCP has not addressed the issue of whether appellant's claim should be expanded to include a right winged scapula and thus it is not before the Board at this time.