

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

R.M., Appellant

and

DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD,
Philadelphia, PA, Employer

)
)
)
)
)
)
)
)
)
)

**Docket No. 24-0894
Issued: December 3, 2024**

Appearances:
Michael D. Overman, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 5, 2024 appellant, through counsel, filed a timely appeal from a March 14, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

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.*

ISSUE

The issue is whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective October 25, 2023 as she had no further disability or residuals causally related to her May 5, 1992 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are as follows.

On May 27, 1992 appellant, then a 32-year-old insulator helper, filed a traumatic injury claim (Form CA-1) alleging that on May 5, 1992 she sustained a contusion of the left shoulder when she hit her shoulder on a valve while in the performance of duty. OWCP accepted the claim for a left shoulder contusion, adhesive capsulitis of the left shoulder, calcifying tendinitis of the left shoulder, and brachial plexus lesions of the left shoulder. Appellant experienced intermittent periods of disability from June 1 to July 23, 1992, when she returned to work with restrictions. She stopped work on February 5, 1994 and did not return.

By decision dated February 17, 2010, OWCP reduced appellant's wage-loss compensation effective March 14, 2010 based on its finding that she had the capacity to earn wages as a medical record coder.

On August 21, 2019 OWCP referred appellant, together with the case record and a statement of accepted facts (SOAF) to Dr. Steven J. Valentino, an osteopath, for a second opinion examination. The SOAF described appellant's employment injury and set forth the accepted conditions.

In a report dated September 10, 2019, Dr. Valentino reviewed appellant's history of injury. On examination he found normal range of motion of the upper extremities and no instability or impingement of the shoulder. Dr. Valentino further found negative Neer and Hawkins tests and no Tinel's sign or Phalen's test. He advised that there was no evidence of complex regional pain syndrome (CRPS). Dr. Valentino found trace left hand weakness which he attributed to residuals of a transient ischemic attack (TIA) with otherwise normal neurological findings. He diagnosed a contusion, adhesive capsulitis, calcifying tendinitis, and brachial plexus of the left shoulder, all of which had resolved. Dr. Valentino related, "Objectively, [appellant] has recovered from her work injury. Subjective complaints do not correspond with objective findings. There are no diagnostic studies included in her records, nor did she provide any." He found that appellant required no further medical treatment due to the employment injury and that, regarding her left shoulder condition, she could resume work without restrictions. In a work capacity evaluation (Form OWCP-5c) of even date, Dr. Valentino indicated that appellant could work full time without restrictions considering her employment injury.

³ Docket No. 21-1150 (issued April 5, 2022).

On September 26, 2019 OWCP notified appellant of its proposed termination of her compensation and medical benefits as the weight of the evidence established that she no longer had any employment-related disability or residuals of her accepted employment injury. It afforded her 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

On October 2, 2019 appellant's counsel challenged the proposed termination of wage-loss compensation. He argued that Dr. Valentino's opinion was not rationalized, failed to include complete examination findings, and failed to explain whether her trace left hand weakness was related to the work injury.

By decision dated December 12, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits effective that date. It found that Dr. Valentino's opinion represented the weight of the evidence and established that she had no further disability or residuals of her accepted employment injury.

On December 19, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. On March 31, 2020 counsel requested a review of the written record in lieu of an oral hearing.

By decision dated April 22, 2020, OWCP's hearing representative affirmed the December 12, 2019 decision. The hearing representative noted that appellant had not submitted supporting medical evidence in more than 10 years.

In a report dated June 9, 2020, Dr. Laura E. Ross, an osteopath, obtained a history of appellant dislocating her shoulder on May 5, 1992 when she fell on a valve. On examination she found a loss of muscle in the anterior and posterior deltoids. Dr. Ross further found eschar of the dorsal aspect of the shoulder and scapulothoracic dysfunction, and reduced motion of the left shoulder. She diagnosed left shoulder pathology due to a previous dislocation, with the development of adhesive capsulitis and left severe ulnar neuropathy. Dr. Ross noted that appellant had undergone two or three shoulder manipulations under anesthesia. She recommended a magnetic resonance imaging (MRI) scan.

An MRI scan of the left shoulder, obtained on July 6, 2020, showed minimal downward sloping of the distal acromion and no evidence of a rotator cuff or labral abnormality.

In an August 3, 2020 progress report, Dr. Ross found crepitus with motion and positive impingement signs on examination of the left shoulder. She indicated that the MRI scan and x-rays had demonstrated impingement tendinopathy of the left shoulder. Dr. Ross diagnosed left shoulder pathology due to a prior dislocation, adhesive capsulitis, left severe ulnar neuropathy, and acromioclavicular joint arthrosis. She found that appellant should be in an off work status and recommended left shoulder surgery.

On August 14, 2020 appellant, through counsel, requested reconsideration.

By decision dated November 18, 2020, OWCP denied modification of its April 22, 2020 decision.

On December 7, 2020 appellant again requested reconsideration.

By decision dated December 22, 2020, OWCP denied appellant's request for reconsideration as she had not submitted new and relevant evidence or argument sufficient to warrant reopening her case for further review of the merits under 5 U.S.C. § 8128(a).

In a report dated February 10, 2021, Dr. Ross discussed appellant's history of injury and reviewed findings from a 2002 MRI scan of the left shoulder showing supraspinatus tendinosis and a 2005 MRI scan of the shoulder showing an abnormal signal at the supraspinatus compatible with focal tendinosis without a discrete tear. She advised that appellant had related that her left shoulder had "locked up on her" around three months earlier. Dr. Ross discussed her history of TIAs and peripheral artery disease. She diagnosed status post left shoulder dislocation with impingement syndrome, adhesive capsulitis, and severe left upper extremity ulnar neuropathy with some contractures of the middle, ring, and small finger passively correctable. Dr. Ross attributed the diagnoses to the May 5, 1992 employment injury. She found that appellant would likely require left shoulder surgery.

On March 4, 2021 appellant, through counsel, requested reconsideration. He asserted that the February 10, 2021 report from Dr. Ross established that she had residuals of her employment injury or, in the alternative, that a conflict in medical evidence existed.

By decision dated May 10, 2021, OWCP denied modification of its November 18, 2020 decision.

Appellant appealed to the Board. By decision dated April 5, 2022, the Board affirmed in part and set aside in part the May 10, 2021 decision.⁴ The Board found that OWCP had met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective December 12, 2019 as she had no further disability or residuals causally related to her accepted May 5, 1992 employment injury. The Board found, however, that a conflict existed between Dr. Ross, appellant's physician, and Dr. Valentino, the second opinion examiner, regarding whether appellant had continuing residuals or disability due to her accepted left shoulder condition. The Board thus determined that the case was not in posture for decision regarding whether she had met her burden of proof to establish continuing employment-related disability or residuals on or after December 12, 2019, and instructed OWCP, on remand, to refer appellant to an impartial medical examiner (IME) to resolve the conflict in opinion.

On November 30, 2022 OWCP referred appellant, together with the case record and a statement of accepted facts (SOAF), to Dr. Robert Grob, an osteopath Board-certified in orthopedic surgery, for an impartial medical examination.

In a report dated February 16, 2023, Dr. Grob discussed appellant's history of injury and provided his review of the medical evidence of record, including the results of diagnostic studies. He noted that a July 6, 2020 MRI scan of the left shoulder showed minimal sloping of the distal acromion and no evidence of an abnormality of the rotator cuff or labral and that a 1992 electromyogram (EMG) showed mild irritation of the left ulnar and motor sensory nerve. Dr. Grob

⁴ *Id.*

discussed appellant's current complaints of increased pain along the anterior left shoulder and left trapezius without numbness or tingling. He noted that she had difficulty opening her hand because of a stroke and that her left wrist was in a "crunched position." On examination Dr. Grob found no signs of impingement or instability of the left shoulder with intact rotator cuff strength, no rotator cuff atrophy or insertional pain, and a negative arm drop. He noted that appellant's passive range of motion (ROM) exceeded that of her active ROM of the left shoulder. Dr. Grob found full ROM of the neck with no spasticity and neurovascularly intact upper extremities bilaterally. He further found tenderness along the left lateral acromion with no acromioclavicular joint pain or tenderness along the bicipital groove. Dr. Grob measured grip strength on the left as 4 pounds and on the right as 40 pounds. He diagnosed as employment related a contusion of the left shoulder and upper arm, adhesive capsulitis of the left shoulder calcific tendinitis of the left shoulder, and a brachial plexus lesion. Dr. Grob found that appellant had no residuals of her left shoulder contusion based on examination findings and diagnostic testing showing no bruising or swelling. He further found no evidence of left shoulder adhesive based on intact passive range of motion. Dr. Grob related that appellant had "full range of motion along her left shoulder without the evidence of any internal derangement including tearing of the rotator cuff, labrum, or biceps." He thus concluded that appellant had "fully recovered from the adhesive capsulitis of her left shoulder." Dr. Grob further found no evidence of calcific tendinitis of the left shoulder based on his review of a July 21, 2020 x-ray and the lack of positive objective findings. He additionally opined that an evaluation of the neck and bilateral upper extremities including the motor sensory nerves from the brachial plexus revealed no signs of brachial plexopathy and further noted that an EMG was also negative. Dr. Grob concluded that appellant had recovered from the accepted conditions of contusion of the left shoulder and upper arm, adhesive capsulitis of the left shoulder, calcific tendinitis of the left shoulder, and brachial plexus lesions. He opined that she could return to work without restrictions considering her accepted injuries and required no further medical treatment.

By decision dated April 4, 2023, OWCP indicated that it was denying appellant's claim for compensation.

On April 12, 2023 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated August 29, 2023, OWCP's hearing representative reversed the April 4, 2023 decision, finding that it was improperly issued. The hearing representative determined that OWCP failed to sufficiently analyze Dr. Grob's opinion or explain its finding that it was entitled to the weight of the evidence. The hearing representative further found that OWCP should have issued a proposed termination of compensation affording appellant proper notice.

On September 14, 2023 OWCP advised appellant of its proposed termination of her wage-loss compensation and medical benefits as the evidence established that she no longer had any employment-related residuals or disability due to her May 5, 1992 employment injury. It afforded her 30 days to submit evidence or argument if she disagreed with the proposed termination of benefits.

In a response dated September 27, 2023, appellant's counsel noted that Dr. Grob had found reduced motion of the left upper extremity and a loss of grip strength. He noted that Dr. Grob had not referred to active motion in finding that she had full ROM and asserted that EMG testing was not negative for the right upper extremity. Counsel also maintained that Dr. Grob failed to demonstrate awareness of appellant's job duties. He requested an additional 30-day period in which to submit evidence.

By *de novo* decision dated October 25, 2023, OWCP terminated appellant's wage-loss compensation and medical benefits effective that date. It found that the opinion of Dr. Grob, the IME, represented the special weight of the evidence and established that she had no further residuals or disability due to her accepted employment injury.

On November 6, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on February 12, 2024.

By decision dated March 14, 2024, OWCP's hearing representative affirmed the October 25, 2023 decision.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.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

Section 8123(a) of FECA provides in pertinent part: "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 third physician who shall make an examination."⁸ The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁹

⁵ See *L.M.*, Docket No. 22-0342 (issued August 25, 2023); *T.C.*, Docket No. 20-1163 (issued July 13, 2021); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁶ *L.K.*, Docket No. 20-0443 (issued August 8, 2023); *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Furman G. Peake*, 41 ECAB 361 (1990).

⁷ *A.J.*, Docket No. 18-1230 (issued June 8, 2020); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

⁸ 5 U.S.C. § 8123(a)

⁹ 20 C.F.R. § 10.321.

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁰

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective October 25, 2023, as she no longer had disability or residuals causally related to her accepted May 5, 1992 employment injury.

Initially, the Board notes that it previously affirmed OWCP's termination of appellant's wage-loss compensation and medical benefits effective December 12, 2019, as she had no further disability or need for medical treatment as a result of her accepted May 5, 1992 employment injury. Following the Board's decision, in an August 29, 2023 decision, OWCP's hearing representative instructed OWCP to issue a new proposed termination of wage-loss compensation and medical benefits. Consequently, the issue of termination of appellant's wage-loss compensation and medical benefits is again before the Board.

OWCP properly determined that there was a conflict in medical opinion between Dr. Ross, appellant's treating physician, and Dr. Valentino, an OWCP second opinion physician, regarding the extent of appellant's disability and need for medical treatment causally related to the accepted employment injury. To resolve the conflict it referred appellant, pursuant to 5 U.S.C. § 8123(a), to Dr. Grob for an impartial medical examination.¹¹

Where a case is referred to an IME for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently rationalized and based on a proper factual and medical background, must be given special weight.¹²

In a report dated February 16, 2023, Dr. Grob provided his review of appellant's history of injury and the medical evidence of record. On examination he found no left shoulder impingement or instability, intact rotator cuff strength with no atrophy or insertional pain, and a negative arm drop. Dr. Grob found that appellant's passive ROM of the left shoulder exceeded that of her active ROM and that she had full ROM of the neck with no spasticity and bilateral neurovascularly intact upper extremities. He found tenderness of the left lateral acromion and noted a loss of grip strength on the left. Dr. Grob advised that appellant had difficulty opening her left hand because of a stroke. He opined that she had no residuals of her accepted contusion of the left shoulder and upper arm, adhesive capsulitis of the left shoulder, calcific tendinitis of the left shoulder, and a brachial plexus lesion based on the findings on examination and a review of diagnostic studies. Dr. Grob explained that examination and diagnostic findings showed no further left shoulder contusion, that there was

¹⁰ See *J.P.*, Docket No. 23-0075 (issued March 26, 2023); *C.M.*, Docket No. 20-1647 (issued October 5, 2021); *James P. Roberts*, 31 ECAB 1010 (1980).

¹¹ *Id.*

¹² *L.S.*, Docket No. 20-1204 (issued October 4, 2021); *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Roger Dingess*, 47 ECAB 123 (1995); *James P. Roberts*, *supra* note 10.

no evidence of adhesion of the left shoulder based on intact passive ROM, that there was no evidence of calcific tendinitis based on a July 21, 2020 x-ray and findings on examination, and that an evaluation of the neck and bilateral upper extremities and review of an EMG showed no evidence of brachial plexopathy. He opined that appellant had no further disability and required no further medical treatment causally related to her accepted May 5, 1992 employment injury.

The Board finds that Dr. Grob's opinion, as IME, is entitled to the special weight of the medical evidence and establishes that appellant no longer had disability or residuals causally related to the accepted May 5, 1992 employment injury. He based his opinion on a proper factual and medical history, and provided detailed findings on examination.¹³ Dr. Grob provided a well-rationalized opinion that appellant had no further residuals causally related to her accepted employment injury, explaining that findings on examination and on diagnostic testing demonstrated no continued employment-related condition that resulted in disability or required further medical treatment.¹⁴ As the IME, his opinion is entitled to the special weight of the evidence. Accordingly, OWCP properly relied upon the report of Dr. Grob in terminating appellant's wage-loss compensation and medical benefits.¹⁵

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits effective October 25, 2023, as she had no further disability or residuals causally related to her May 5, 1992 employment injury.

¹³ *S.V.*, Docket No. 23-0474 (issued August 1, 2023); *J.S.*, Docket No. 20-1409 (issued September 1, 2021).

¹⁴ *J.P.*, *supra* note 10; *J.S.*, *id.*

¹⁵ *See L.S.*, *supra* note 12; *L.B.*, Docket No. 19-1380 (issued February 11, 2020).

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 3, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board