

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

M.R., Appellant)	
)	
and)	Docket No. 24-0556
)	Issued: September 17, 2024
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, FEDERAL)	
CORRECTIONAL INSTITUTION, TERMINAL)	
ISLAND, San Pedro, CA, Employer)	
)	

Appearances:
William Brawner, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 16, 2024 appellant, through counsel, filed a timely appeal from a March 25, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

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 an 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.

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.³

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective March 25, 2024, as she no longer had disability or residuals causally related to her accepted employment injury.

FACTUAL HISTORY

On May 21, 2021 appellant, then a 36-year-old food service assistant, filed an occupational disease claim (Form CA-2) alleging that she developed right upper extremity numbness and pain due to factors of her federal employment, including typing and other repetitive activities. She noted that she first became aware of her condition on April 26, 2021 and realized its relationship to her federal employment on May 19, 2021. OWCP accepted the claim for right carpal tunnel syndrome, right elbow cubital tunnel, and impingement syndrome of the right shoulder. It subsequently expanded the acceptance of appellant's claim to include right rotator cuff tendinitis, aggravation of preexisting right acromioclavicular (AC) joint osteoarthritis, and aggravation of preexisting right shoulder anterior labral tear. Appellant did not immediately stop work. OWCP paid her wage-loss compensation pursuant to a loss of wage-earning capacity decision, effective December 7, 2021, and on the periodic rolls, effective September 10, 2023.

A magnetic resonance imaging (MRI) scan of the right shoulder dated August 3, 2021 demonstrated a focal tear of the anterior glenoid labrum, and mild tendinopathy at the supraspinatus tendon insertion onto the greater tuberosity.

Dr. Gary L. Baker, a Board-certified anesthesiologist, treated appellant from September 22 through December 15, 2022 for a work-related right shoulder injury. He noted tenderness on palpation of the right AC joint and right anterior shoulder, and limited range of motion of the right shoulder on abduction, and forward flexion. Dr. Baker diagnosed right shoulder derangement and chronic pain and recommended a home exercise program. On November 17, 2022 he requested authorization for plasma-rich platelet therapy.

In reports dated October 27 and December 5, 2022, Dr. Shahryar Ahmadi, a Board-certified orthopedic surgeon, treated appellant for right shoulder pain due to subacromial bursitis. He diagnosed chronic right shoulder pain and right rotator cuff tear and returned appellant to modified work full time with restrictions of no lifting greater than five pounds.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the March 25, 2024 decision, appellant submitted additional evidence to OWCP. 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." 20C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

On July 17, 2023 Dr. Ahmadi noted that conservative treatment was unsuccessful and recommended arthroscopic surgery. On August 9, 2023 he performed arthroscopy of the right shoulder, extensive debridement, and right tenodesis of the long tendon biceps. Dr. Ahmadi diagnosed right shoulder internal derangement, right shoulder bursitis, and injury of the long tendon of right biceps. On November 13, 2023 he treated appellant for status-post right shoulder arthroscopy, debridement, and biceps tenodesis. Appellant reported that postoperatively her right shoulder range of motion improved. Dr. Ahmadi diagnosed status-post right shoulder surgery and returned appellant to modified-duty work on November 14, 2023 with restrictions of no lifting greater than five pounds and no overhead work. On January 8, 2024 he treated her in follow up and measured forward elevation of 140 degrees, external rotation of 45 degrees, intact strength at rotator muscles, and negative Neer and Hawkins signs. Dr. Ahmadi diagnosed status post right shoulder surgery. He returned appellant to daily activity as tolerated and full duty without limitations or restrictions. Dr. Ahmadi recommended another course of physical therapy to improve range of motion. In an attending physician's report (Form CA-20) of even date, he indicated that appellant's injury occurred while at work driving a forklift along with repetitive use of her arm while lifting, pushing, pulling, and performing overhead work. Dr. Ahmadi noted objective findings of positive Neer and Hawkins signs, passive forward elevation to L1 of the right shoulder, and an MRI scan revealing a small labral tear and subacromial bursitis. He diagnosed subacromial bursitis and right labral tear and marked "Yes" indicating that the conditions found caused or aggravated by employment activities including driving a forklift, lifting, pushing, and repetitive use of the right arm. Dr. Ahmadi noted that appellant was no longer disabled and was released to full-time work on January 8, 2024 without restrictions.

Dr. Baker treated appellant from October 19, 2023 through January 9, 2024 for a work-related right shoulder injury. He noted tenderness on palpation of the right AC joint and right anterior shoulder. Dr Baker diagnosed right shoulder derangement, chronic pain, and status post right shoulder arthroscopy.

In a notice dated February 7, 2024, OWCP proposed to terminate appellant's wage-loss compensation as she no longer had disability or residuals causally related to her accepted employment injury. It found that the weight of the medical opinion evidence rested with the August 8, 2024 opinion of Dr. Ahmadi with regard to appellant's work capacity. OWCP afforded appellant 30 days to submit evidence and argument challenging the proposed termination action.

OWCP subsequently received additional evidence, including documentation of appellant's September 7, 2023 removal from her position as a food services assistant for physical inability to perform the duties of the position. A notification of personnel action form dated September 8, 2023 noted that appellant was removed from employment for a medical/physical inability to perform the duties of her job.

Dr. Baker treated appellant on February 6 and March 5, 2024 for right shoulder pain. He diagnosed right shoulder derangement, chronic pain, and status-post right shoulder arthroscopy.

On February 19, 2024 Dr. Ahmadi noted that appellant was status post right shoulder arthroscopy, debridement, and biceps tenodesis. Appellant reported experiencing right shoulder pain and was attending physical therapy. Dr. Ahmadi noted forward elevation of 140 degrees, external rotation of 45 degrees, internal rotation up to L5, and intact strength at rotator muscles.

He diagnosed status-post right shoulder surgery and chronic right shoulder pain. Dr. Ahmadi indicated that appellant was six months out from right shoulder arthroscopy, debridement, and biceps tenodesis. He recommended exercise and physical therapy to improve her range of motion and strength. Dr. Ahmadi continued full duty with no limitations or restrictions.

In response to the notice of proposed termination, appellant submitted a statement on March 22, 2024 and indicated that the employing establishment removed her from federal employment in September 2023 because of her accepted employment injury claiming that her employment injury rendered her completely disabled. She referenced agency proposed and final removal letters, which stated that she was disabled because of her employment injury. Appellant noted that OWCP proposed to terminate her wage-loss benefits because she recovered while the agency was refusing to reemploy her claiming she was too disabled to work. She requested a final decision on the proposed notice of termination.

By decision dated March 25, 2024, OWCP finalized the notice of proposed termination of appellant's wage-loss compensation, effective the same date. It found that the weight of the medical opinion evidence with respect to employment-related residuals/disability rested with the January 8 and February 19, 2024 opinions of Dr. Ahmadi. OWCP noted that the claim remained open for medical benefits.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁴ 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.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective March 25, 2024.

OWCP based its termination of appellant's wage-loss compensation on the January 8 and February 19, 2024 reports of Dr. Ahmadi, appellant's treating physician. In his January 8, 2024 report, Dr. Ahmadi discussed appellant's history of medical treatment, and reported her continuing symptoms of pain of the right shoulder and limited range of motion. He detailed the physical

⁴ See *D.B.*, Docket No. 19-0663 (issued August 27, 2020); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ See *D.G.*, *id.*; *R.P.*, *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ *K.W.*, Docket No. 19-1224 (issued November 15, 2019); see *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

examination findings, and diagnosed subacromial bursitis and right labral tear, status post right shoulder surgery. Dr. Ahmadi continued physical therapy to improve range of motion and released appellant to full-time work on January 8, 2024 without restrictions. In an attending physician's report of even date, he noted objective findings of positive Neer and Hawkins signs, passive forward elevation of the right shoulder to L1, and an MRI scan demonstrating a small labral tear and subacromial bursitis. Dr. Ahmadi diagnosed subacromial bursitis and right labral tear and released appellant to work full-time work on January 8, 2024 without restrictions. Similarly, in a February 19, 2024 report, he diagnosed status post right shoulder surgery and chronic right shoulder pain. Dr. Ahmadi indicated that appellant was six months' post right shoulder arthroscopy, debridement, and biceps tenodesis and continued his full-duty work status with no restrictions.

The Board finds that Dr. Ahmadi failed to address all of the accepted conditions in his January 8 and February 19, 2024 reports. Dr. Ahmadi referenced chronic right shoulder pain and based his opinion on appellant's ability to return to work without addressing the other accepted conditions of right elbow cubital tunnel and carpal tunnel syndrome. Therefore, as he did not explain with sufficient rationale why all of the accepted conditions had resolved his opinion is of diminished probative value.⁷

As the medical evidence of record is insufficient to establish that appellant no longer had disability or residuals causally related to her accepted employment injury, the Board finds that OWCP failed to meet its burden of proof.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective March 25, 2024.

⁷ *M.R.*, Docket No. 20-0707 (issued November 30, 2020); *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 17, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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