

when she tripped on a raised sidewalk and fell down. She stopped work that day. By letter dated August 11, 2010, OWCP accepted a left hip sprain, bilateral knee sprain, left shoulder sprain, right elbow sprain and right wrist sprain. Appellant received disability compensation.

In an August 18, 2010 report, Dr. Michael Swany, a Board-certified orthopedic surgeon, conducted a follow-up examination of appellant's right knee, left shoulder, right wrist and elbow. Appellant stated that her right wrist and elbow pain had resolved. Examination revealed normal tandem nonantalgic gait and left shoulder mild tenderness over the bicipital groove and greater tuberosity. Resisted stress test, supraspinatus, infraspinatus and subscapularis revealed 5/5 strength with relatively mild pain. Flexion was tolerated to 90 to 95 degrees with internal rotation of 5 degrees and external rotation of approximately 45 to 50 degrees. Appellant was able to perform straight leg raise comfortably. Upon examination of her right knee, Dr. Swany observed no effusion, erythema or increased warmth. Tenderness to palpation was mildly present along the medial, lateral and patellofemoral joint regions. Dr. Swany diagnosed improved left hip osteoarthritis with overuse strain, improved left shoulder strain, resolved right wrist sprain, resolved right elbow pain with probable healed impacted radial neck fracture and tricompartmental arthrosis bilateral knees.

In a November 19, 2010 report, Dr. Swany noted appellant's complaints of continued left hip pain with a degree of arthritis. He advised that appellant's left hip sprain, bilateral knee sprain and right wrist sprain had resolved. Appellant's left shoulder sprain had nearly completely resolved and her right elbow sprain had improved. Dr. Swany reported that appellant had been referred for a functional capacity evaluation.

In a November 30, 2010 functional capacity evaluation report, a physical therapist provided an accurate history of injury and reviewed appellant's medical history. It was noted that x-rays were positive for osteoarthritis in both knees and the left hip. Appellant related that prolonged sitting, walking, leaning on her left upper extremity, lifting and bending aggravated her symptoms. The physical therapist concluded that appellant was able to function in the light physical demand category for eight hours per day. It was noted that she could occasionally lift up to 17.5 pounds floor to waist, 10 pounds, waist to shoulder, 12.5 pounds floor to shoulder and carry 10 pounds frequently.

In a March 29, 2011 report, Dr. Swany reviewed appellant's November 30, 2010 functional capacity evaluation. He noted that appellant was last examined in his office on September 8, 2010 and observed that her left hip strain, left shoulder strain and bilateral knee sprains had resolved. Appellant continued to exhibit symptoms of preexisting osteoarthritis and stiffness in her knees. Based on the functional capacity evaluation and the physical requirements of the job census, appellant should be able to perform her job as a crew leader and enumerator with respect to her May 2010 work injury. Dr. Swany concluded that appellant had reached maximum medical improvement regarding her May 2010 work injury with no residual permanent partial impairment.

On April 6, 2011 OWCP issued a notice of proposed termination of appellant's disability compensation and medical benefits based on Dr. Swany's medical reports. Appellant was advised that she had 30 days to submit additional relevant evidence or argument if she disagreed with the proposed action.

In an April 22, 2011 statement, appellant disagreed with the notice of proposed termination and requested a change of physicians. She stated that, during her last visit with Dr. Swany, she explained that physical therapy had helped but did not address all her problems. Appellant wanted to speak to him more about her pain, but he left the room and did not return. She stated that Dr. Swany did not listen to her or provide sufficient treatment. Appellant disagreed with his conclusion that her work-related problems had resolved and that her current symptoms resulted from a preexisting condition. She contended that before her fall at work, she was able to work 10-hour shifts and walk, sit and stand for long periods of time. Appellant was unable to perform the duties of her preinjury job. She continued to experience pain in her left hip and mild pain in her left knee, which was never treated.

By decision dated May 12, 2011, OWCP terminated appellant's compensation and medical benefits effective May 13, 2011.

LEGAL PRECEDENT

Under FECA, once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.² OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³ Its 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

OWCP accepted that on May 17, 2010 appellant sustained a left hip, bilateral knee, left shoulder, right elbow and right wrist sprain. Appellant did not return to work and received disability compensation. On May 12, 2011 OWCP terminated her compensation based on the reports of treating physician, Dr. Swany, who determined that her employment-related conditions had resolved. The Board finds that OWCP properly terminated appellant's compensation benefits effective May 13, 2011 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injuries.

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 *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁶ *A.P.*, *supra* note 5; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

OWCP based its decision to terminate on the reports of Dr. Swany. In an August 18, 2010 report, Dr. Swany noted appellant's complaints regarding right knee, left shoulder, right wrist and elbow injuries. Appellant informed him that her right wrist and elbow pain had resolved and that her right knee was feeling much better after physical therapy. Upon examination, Dr. Swany observed groove and greater tuberosity. Resisted stress test, supraspinatus, infraspinatus and subscapularis revealed 5/5 strength with relatively mild pain. Examination of appellant's right knee revealed no effusion, erythema, or increased warmth and tenderness to palpation was mildly present along the medial, lateral and patellofemoral joint regions. In a November 19, 2010 report, Dr. Swany noted appellant's complaints of continued left hip pain with a degree of arthritis. He stated that her left hip sprain, bilateral knee sprain, and right wrist sprain had resolved. Dr. Swany further noted that appellant's right elbow sprain had improved and that her left shoulder sprain had nearly resolved. In a March 29, 2011 report, he noted that her left shoulder sprain had resolved. He also concluded that based on a functional capacity evaluation appellant had reached maximum medical improvement regarding her May 2010 work injury with no residual permanent partial impairment. Dr. Swany reported that appellant was able to return to her date-of-injury position.

The Board finds that Dr. Swany's reports are sufficiently detailed and well reasoned to constitute the weight of the medical opinion evidence. Dr. Swany reviewed appellant's history and provided findings on examination. He opined that her employment-related injuries had all resolved and that she no longer suffered residuals from her employment-related injuries. Dr. Swany concluded that appellant had reached maximum medical improvement and was capable of returning to her date-of-injury position.

Appellant did not submit any new or additional medical evidence to establish that she had any continuing disability or residuals due to her accepted employment injury. Thus, the Board finds that the weight of the medical evidence is represented by the findings and conclusions of Dr. Swany and that OWCP met its burden of proof to terminate appellant's compensation and medical benefits as the evidence establishes that she no longer has residuals of her employment-related injuries. While appellant did request authorization for change of physician in her April 22, 2011 response to the notice of proposed termination of benefits, as the medical evidence of record did not support the need for continued medical treatment, OWCP properly terminated appellant's compensation benefits without authorizing further medical care.

On appeal, appellant disagreed with treating physician Dr. Swany's March 29, 2011 report alleging that he last examined her six months ago and requested that she continue physical therapy. As noted above, however, the Board finds that Dr. Swany's reports were detailed and well rationalized and entitled to the weight of the medical evidence. Appellant further contended that the enclosed medical evidence revealed that the functional capacity evaluation was flawed and should not be considered. The Board's jurisdiction, however, is limited to evidence that was before OWCP at the time it issued its final decision.⁷ The Board may not consider this evidence for the first time on appeal.⁸ As appellant did not submit the necessary medical opinion evidence to establish that she continued to suffer residuals of her employment-related conditions and

⁷ See 20 C.F.R. § 501.2(c).

⁸ *Sandra D. Puitt*, 57 ECAB 126 (2005).

required continued medical treatment, the Board finds that OWCP properly terminated appellant's claim.

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 and medical benefits effective May 13, 2011.

ORDER

IT IS HEREBY ORDERED THAT the May 12, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board