

landing on her right elbow, while bracing herself with her left hand.² She stopped work on July 27, 1998. OWCP accepted appellant's claim for bilateral contusion of the knees, bilateral carpal tunnel syndrome, aggravation of lateral epicondylitis and right ankle sprain and paid appellant compensation for injury-related disability for work. Appellant underwent lateral epicondylar releases to both elbows in 1999, an ulnar nerve release and transposition to the left elbow in 2000, right carpal tunnel release in 2005 and left carpal tunnel release in 2006. She was placed on the periodic rolls.

Appellant received treatment from Dr. Alvaro A. Hernandez, a Board-certified orthopedic surgeon. On August 4, 2008 Dr. Hernandez noted that appellant presented with complaints of left knee pain, which was originally due to her May 21, 1998 injury. He diagnosed chronic left knee sprain and a possible lateral meniscus tear. In a January 5, 2009 report, Dr. Hernandez noted that he first saw appellant for the knee complaints in 2008. He continued to treat appellant and submit periodic reports.

OWCP referred appellant to Dr. Randy J. Pollet, a Board-certified orthopedic surgeon, for a second opinion examination.

In a November 2, 2010 report, Dr. Pollet described appellant's history of injury and treatment. He conducted a physical examination, reviewed diagnostic tests and noted that range of motion of both the right and left elbows was full and complete, there were well-healed scars on the medial and lateral aspects of the left elbow, a well-healed scar over the lateral aspect of the right elbow, and no swelling, crepitus or clinical findings in either elbow. Dr. Pollet also found well-healed incisions over both carpal canals, excellent full range of motion and no instability. He found the right foot and ankle stable with minimal tenderness on palpation. Dr. Pollet reviewed diagnostic testing to include x-rays of the elbows, wrists, knees and ankle and found that it revealed minimal age-related degenerative changes. He opined that appellant had no injury-related disability or impairment. Dr. Pollet explained that "[a]lthough the subjective complaints were multiple including significant pain and stiffness; the range of motion of the injured areas was excellent. Surgery was performed with precision resulting in no substantial objective findings." Dr. Pollet indicated the lateral epicondylitis/ elbow sprains and strains; the right and left wrist and hand sprains and strains; and carpal tunnel syndrome, right and left knee sprains/strains; right foot and ankle sprains and strains were treated adequately and resolved. He opined that she was able to return to full duty with no restrictions.

On November 12, 2010 OWCP issued a notice of proposed termination of compensation, finding that the weight of the medical evidence was represented by Dr. Pollet, who established that the residuals of the work injury of May 21, 1998 had ceased.

In a December 6, 2010 report, Dr. Alvarez noted that appellant continued to have pain in her hands and left knee. He diagnosed status post right and left carpal tunnel releases and chronic internal derangement of the knee.

² The record reflects that appellant had preexisting degenerative disc disease of the spine, fibromyalgia, chronic fatigue, shoulder surgery, knee surgery, lupus and arthritis.

On December 12, 2010 OWCP received a request from appellant for various diagnostic tests to include: a magnetic resonance imaging (MRI) scan; referral to a neurologist; electromagnetic testing and a functional capacity evaluation (FCE). She advised OWCP that she believed her ongoing pain was work related. Appellant provided a December 7, 2010 statement advising OWCP that her symptoms and conditions were work related. She argued that her physician's reports should carry the weight of the evidence as opposed to the second opinion, who only examined her for a few minutes.

By decision dated January 7, 2011, OWCP terminated appellant's compensation benefits effective January 16, 2011.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴

ANALYSIS

In the instant case, OWCP accepted that appellant sustained a bilateral contusion of the knees, bilateral carpal tunnel syndrome, aggravation of lateral epicondylitis and right ankle sprain and paid appellant compensation for injury-related disability for work. Appellant was placed on the periodic rolls.

On September 20, 2010 OWCP referred appellant for a second opinion examination with Dr. Pollet, a Board-certified orthopedic surgeon, for a second-opinion examination.

In a November 2, 2010 report, Dr. Pollet noted appellant's history of injury and treatment and conducted a physical examination. He determined appellant's full range of motion of both the right and left elbows with well-healed scars no swelling, crepitus or clinical findings in either elbow. Additionally, Dr. Pollet determined that there were well-healed incisions over both carpal canals, with excellent full range of motion and no instability. Regarding the right foot and ankle, he found they were stable with minimal palpation tenderness. Dr. Pollet reviewed diagnostic tests and advised that they revealed minimal age-related degenerative changes. He determined that appellant had no injury-related disability or impairment. Furthermore, Dr. Pollet noted appellant's subjective complaints but explained the range of motion of the injured areas was excellent and the surgical results produced "no substantial objective findings." He concluded that the accepted conditions included the lateral epicondylitis/elbow sprains and strains; the right and left wrist and hand sprains and strains; and carpal tunnel syndrome, right and left knee sprains/strains; right foot and ankle sprains and strains were treated adequately and

³ *Curtis Hall*, 45 ECAB 316 (1994).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989).

resolved and appellant was able to return to full duty with no restrictions. Dr. Pollet found no basis on which to attribute any continuing employment-related condition or disability.

The Board finds that Dr. Pollet's opinion accurately described appellant's history of injury, reflected a thorough review of all diagnostic testing and conducted a thorough medical examination. His report is well rationalized and findings are supported with appropriate medical reasoning. The Board finds his report represents the weight of the medical evidence. The Board also notes that there are no current reports from a treating physician explaining why there are any continuing residuals of the accepted conditions. The Board finds that the reports from the treating physician, Dr. Alvarez, who continued to treat appellant do not offer any specific opinion regarding the continuing work-related condition or disability. For example, while Dr. Alvarez noted that appellant had an internal derangement of the left knee, the Board notes that the internal derangement of the left knee was not an accepted condition. Furthermore, he opined that appellant was status post right and left carpal tunnel releases and did not offer any opinion to explain why she continued to be disabled but did not explain the reasons why any continuing disability would be employment related. Thus, Dr. Alvarez' reports were insufficiently rationalized⁵ to overcome or to create a medical conflict with the opinion⁶ of the second opinion physician. Because appellant no longer has residuals or disability related to her accepted May 21, 1998 employment condition, OWCP properly terminated entitlement to wage-loss compensation and medical benefits effective January 16, 2011. Accordingly, OWCP met its burden of proof to justify termination of benefits.

On appeal, appellant generally disagreed with OWCP's disposition of her claim. She noted that she was not given enough time to gather additional evidence. Appellant noted that she could not get an appointment with her treating physician, Dr. Alvarez until December 6, 2010 and she requested an extension but was not given one. The Board notes that the record reflects that appellant was accorded more than the allotted 30 days within which to file a response.⁷ Appellant also submitted additional evidence with her appeal. However, the Board has no jurisdiction to review this evidence for the first time on appeal.⁸

CONCLUSION

The Board finds that OWCP met its burden of proof in terminating appellant's benefits effective January 16, 2011.

⁵ See *T.F.*, 58 ECAB 128 (2006) (a medical report is of limited probative value on a given medical question if it is unsupported by medical rationale).

⁶ See 5 U.S.C. § 8123(a).

⁷ Appellant may submit 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.

⁸ 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 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