

On appeal, appellant contends that she continues to have disabling residuals of the accepted bilateral carpal tunnel syndrome and cervical sprain. She asserts that OWCP should have expanded her claim to accept C3-4 and C5-6 disc bulges, cervical radiculopathy and complex regional pain syndrome. Appellant also argues that the reports of the second opinion and impartial medical specialists in her case were insufficiently rationalized to represent the weight of the medical evidence.

FACTUAL HISTORY

OWCP accepted that on or before December 1, 1998 appellant, then a 49-year-old window clerk, sustained employment-related bilateral carpal tunnel syndrome. She stopped work on April 25, 2000 and did not return. Appellant underwent a right median nerve release on June 14, 2000 and a left median nerve release on February 21, 2001. OWCP approved both procedures. On December 27, 2001 it expanded the claim to accept a cervical sprain. Appellant received wage-loss compensation.

Dr. Arturo Pena, an attending Board-certified orthopedic surgeon, submitted periodic reports from November 15, 2001 to January 5, 2006 noting bilateral cervical radiculopathy and bilateral hand weakness. He diagnosed cervical spondylosis, cervical disc disease and cervical radiculopathies aggravated by repetitive upper extremity motions and heavy lifting at work. Dr. Pena found appellant totally disabled for work due to residuals of her work condition.³

In August 8 and September 12, 2002 reports, Dr. Rick J. Singh, an attending Board-certified neurologist, diagnosed cervical disc displacement with right C6 and left C7 radiculopathy. He submitted periodic reports through October 12, 2006 finding appellant totally disabled due to cervical and lumbar paraspinous pain, thoracic disc displacement and cervical radiculitis.⁴

On June 26, 2006 OWCP obtained a second opinion from Dr. Robert F. Draper, Jr., a Board-certified orthopedic surgeon, who opined that appellant could perform full-time light duty. In a July 12, 2006 supplemental report, Dr. Draper opined that appellant's cervical spine conditions were due to the normal aging process, without "evidence of any aggravation" from federal employment.

OWCP found a conflict of medical opinion between Dr. Draper, for the government, and the treating physicians regarding whether appellant could work an eight-hour day without restrictions. To resolve the conflict, it selected Dr. Thomas DiBenedetto, a Board-certified

³ As of July 27, 2006 the record reflects that Dr. Pena was no longer practicing due to his death.

⁴ In November 2001, OWCP obtained a second opinion from Dr. Michael J. Katz, a Board-certified orthopedic surgeon, who found that appellant could perform full-time limited duty. Based on Dr. Katz's opinion, it began a vocational rehabilitation effort in February 2002 that was suspended when appellant sustained a left wrist fracture when she fell at home in June 2002. On April 28, 2003 OWCP obtained an updated report from Dr. Katz, who found preexisting degenerative disc disease. It found a conflict of opinion between appellant's physicians and Dr. Katz, and selected Dr. Peter Feinstein, a Board-certified orthopedic surgeon, as impartial medical examiner. Dr. Feinstein provided an April 8, 2004 report finding that the accepted conditions had resolved and that appellant's cervical disc conditions were not related to her federal employment.

orthopedic surgeon, who submitted a September 12, 2006 report reviewing the medical record and statement of accepted facts. Dr. DiBenedetto found that appellant could return to work without restrictions. He further found that the accepted conditions had completely resolved as there was no objective evidence of any orthopedic or neurologic condition.

In a September 28, 2006 file memorandum, OWCP noted that Dr. DiBenedetto resolved the conflict between Dr. Draper and her treating physician regarding work limitations. However, Dr. DiBenedetto created a new conflict regarding the presence of work-related residuals. This conflict required resolution by appointment of a new impartial medical examiner.

On October 18, 2006 OWCP selected Dr. Wayne A. Colizza, a Board-certified orthopedic surgeon, to resolve the conflict regarding the presence of work-related residuals. Dr. Colizza submitted a November 13, 2006 report reviewing the medical record and statement of accepted facts. On examination, he found actively restricted cervical motion, diffuse paraspinal tenderness and a small dorsal ganglion of the right wrist. Dr. Colizza diagnosed bilateral carpal tunnel syndrome by history, cervical sprain, cervical radiculitis and left wrist fracture. He opined that appellant's cervical radiculitis and wrist fracture were unrelated to work factors and that the cervical sprain and carpal tunnel syndrome had resolved without residuals. Dr. Colizza found her able to perform full-time work with no limitations due to the accepted conditions.

On December 4, 2006 OWCP proposed to terminate appellant's compensation benefits because the accepted carpal tunnel syndrome and cervical sprain had ceased without residuals. On December 24, 2006 appellant objected to the proposed termination. She submitted reports from Dr. Singh dated from November 9, 2006 to January 18, 2007, finding continued cervical radiculitis.⁵ In a January 2, 2007 letter, appellant contended that OWCP erred by finding that Dr. DiBenedetto created a new conflict with Dr. Pena and violated its procedures by appointing Dr. Colizza.

By decision dated February 5, 2007, OWCP terminated appellant's wage-loss and medical benefits effective February 18, 2007, based on Dr. Colizza's opinion.

In a February 26, 2007 letter, appellant requested an oral hearing, conducted telephonically on October 10, 2007. She submitted June 21, 2007 electromyogram (EMG) and nerve conduction velocity (NCV) studies performed by Dr. Singh showing bilateral cervical radiculopathy on the left at C7 and on the right at C6. Dr. Singh found appellant's condition unchanged on July 12 and October 5, 2007.⁶ Appellant also submitted an October 2, 2007 report from Dr. Patrick DeRosa, an attending orthopedic surgeon, opining that repetitive lifting, reaching, pulling and pushing at work caused cervical disc degeneration and radiculitis that totally disabled appellant.

⁵ In a letter received on January 26, 2007, Dr. Colizza reviewed Dr. Singh's new reports and stated that they did not alter his November 13, 2006 opinion.

⁶ Appellant also submitted a deposition from her husband describing her physical debilitation.

By decision dated December 31, 2007, OWCP's hearing representative affirmed the February 5, 2007 decision, finding Dr. Colizza's opinion continued to represent the weight of the medical evidence regarding the absence of injury-related residuals.

In a December 5, 2008 letter, appellant requested reconsideration. She asserted that she continued to have disabling residuals of the accepted conditions. Appellant contended that her cervical disc degeneration and radiculopathy were due to repetitive heavy lifting and strenuous upper extremity activities at work. She submitted employing establishment health unit notes from 1998.

By decision dated February 23, 2009, OWCP denied modification, finding that the additional evidence did not outweigh Dr. Colizza's opinion that appellant no longer had objective residuals of the accepted bilateral carpal tunnel syndrome and cervical sprain.

In a February 9, 2010 letter, appellant requested reconsideration, asserting that Dr. Colizza should not represent the weight of the medical opinion. She submitted January 8 and March 19, 2009 slips from Dr. Singh finding her totally disabled for work. In a January 15, 2010 report, Dr. Singh newly diagnosed complex regional pain syndrome, triggered by bilateral carpal tunnel syndrome and bilateral median nerve releases.

By decision dated March 16, 2010, OWCP denied modification, finding that appellant's arguments and Dr. Singh's reports were insufficient to outweigh Dr. Colizza's report.

In a January 29, 2011 letter, appellant requested reconsideration, contending that her physicians' opinions should outweigh those of the second opinion physicians. She submitted a January 25, 2011 report from Dr. Singh diagnosing complex regional pain syndrome of the upper extremities, neck and shoulders triggered by the accepted bilateral carpal tunnel syndrome and median nerve releases. OWCP's medical adviser opined on July 7, 2011 that the clinical findings described by Dr. Singh did not meet the diagnostic criteria for complex regional pain syndrome.

By decision dated July 14, 2011, OWCP denied modification, finding that the additional medical evidence submitted was insufficient to outweigh Dr. Colizza's report regarding the absence of injury-related residuals. It further found that appellant's legal arguments did not establish any error by OWCP.

In a July 10, 2012 letter, appellant requested reconsideration. She asserted that OWCP erred by failing to accept cervical disc degeneration, cervical radiculopathy and complex regional pain syndrome as work related. Appellant contended that it should not have appointed Dr. Colizza as Dr. DiBenedetto did not create a new conflict of opinion. She submitted a July 1, 2012 report from Dr. Singh, explaining that she met the diagnostic criteria for complex regional pain syndrome due to cervical radiculopathy on EMG testing, bilateral median nerve releases and consistent paresthesias.

In an October 16, 2012 merit decision, OWCP found that Dr. Singh's July 1, 2012 report was insufficient to outweigh Dr. Colizza's finding of no injury-related residuals.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁷ 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.⁸

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁹ 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.¹⁰

Section 8123(a) of FECA provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.¹¹ When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.¹² In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹³

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome and a cervical sprain. Appellant underwent bilateral median nerve releases. Dr. Pena, an attending Board-certified orthopedic surgeon, found her totally disabled for work through January 5, 2006 due to cervical disc disease and cervical radiculopathy. Dr. Singh, an attending Board-certified neurologist, found her totally disabled for work through October 12, 2006 due to cervical radiculitis and paraspinal pain.

On June 26 and July 12, 2006 OWCP obtained a second opinion from Dr. Draper a Board-certified orthopedic surgeon, who opined that appellant's cervical conditions were due to aging and that she could perform full-time light duty. It found a conflict between Dr. Pena and

⁷ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁸ *Id.*

⁹ *Roger G. Payne*, 55 ECAB 535 (2004).

¹⁰ *Pamela K. Guesford*, 53 ECAB 726 (2002).

¹¹ 5 U.S.C. § 8123(a); *Robert W. Blaine*, 42 ECAB 474 (1991).

¹² *Delphia Y. Jackson*, 55 ECAB 373 (2004).

¹³ *Anna M. Delaney*, 53 ECAB 384 (2002).

Dr. Draper as to whether appellant could work an eight-hour day with limitations. OWCP selected Dr. DiBenedetto, a Board-certified orthopedic surgeon, as impartial specialist on this issue. Dr. DiBenedetto reviewed the medical record and statement of accepted facts. After examining appellant, he opined that, as the cervical sprain and carpal tunnel syndrome had resolved completely, appellant could return to full-time work with no restrictions.

OWCP selected Dr. Colizza, a Board-certified orthopedic surgeon, as impartial medical examiner to resolve a new conflict created by the impartial specialist, between Dr. Pena and Dr. DiBenedetto, regarding the presence of continuous residuals of her accepted conditions. After reviewing the medical record, statement of accepted facts and performing a thorough examination, Dr. Colizza provided a November 13, 2006 report finding that the accepted conditions had resolved without residuals. He noted detailed clinical findings establishing that there was no objective evidence of the accepted bilateral carpal tunnel syndrome or cervical sprain.

The Board finds that OWCP correctly accorded Dr. DiBenedetto's opinion the weight of the medical evidence regarding work limitations. The Board further finds that OWCP properly gave Dr. Colizza's opinion the weight of the medical evidence regarding the issue of continued residuals of the accepted condition. Their reports were based on a complete and accurate medical history as well as thorough clinical examinations. Both physicians provided reasoned opinions on the relevant issue.¹⁴

Accompanying her July 10, 2012 reconsideration request, appellant submitted a July 1, 2012 report from Dr. Singh, an attending Board-certified neurologist, reiterating his prior opinions that the accepted injuries remained active and caused complex regional pain syndrome. However, Dr. Singh did not explain the pathophysiologic connection between appellant's subjective symptoms and the accepted cervical sprain and carpal tunnel syndrome. In the absence of such explanation, his report is insufficiently rationalized to create a new conflict of opinion with that of Dr. Colizza or Dr. DiBenedetto.¹⁵ Therefore, OWCP's October 16, 2012 decision denying modification of the February 5, 2007 termination decision was proper under the law and facts of this case.

On appeal, appellant asserts that the opinions of Dr. DiBenedetto and Dr. Colizza were insufficiently rationalized to represent the weight of the medical evidence. As stated above, both physicians provided reports based on a complete medical and factual history. Dr. DiBenedetto opined that appellant had no work limitations related to the accepted injuries. Dr. Colizza explained that the accepted cervical sprain and bilateral carpal tunnel syndrome had ceased without residuals. 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.

¹⁴ *Id.*

¹⁵ *Deborah L. Beatty*, 54 ECAB 340 (2003).

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits.¹⁶ For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation.¹⁷ The fact that a condition's etiology is unknown or obscure neither relieves appellant of the burden of establishing a causal relationship by the weight of the medical evidence, nor shifts the burden of proof of OWCP to disprove an employment relationship.¹⁸

ANALYSIS -- ISSUE 2

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome and a cervical sprain. On February 5, 2007 it terminated her wage-loss and medical compensation benefits effective February 18, 2007 on the grounds that the accepted conditions ceased without residuals on work limitations. The burden shifted to appellant to show that she continued to be disabled for work on and after February 18, 2007 due to the accepted injuries.¹⁹

Pursuant to her July 10, 2012 request for reconsideration, appellant submitted a July 1, 2012 report from Dr. Singh reiterating his prior opinions that she had complex regional pain syndrome which was related to the accepted injuries. However, Dr. Singh did not find that she was disabled for work due to objective residuals of the accepted carpal tunnel syndrome or cervical sprain. Instead, he attributed appellant's inability to work to complex regional pain syndrome, a condition not accepted by OWCP. The Board notes that an OWCP medical adviser explained in a July 7, 2011 report that Dr. Singh's clinical and electrodiagnostic findings did not meet the diagnostic criteria for complex regional pain syndrome.

The Board finds that OWCP properly found that appellant did not establish continuing work-related disability on and after February 18, 2007. Dr. Singh's opinion was insufficiently rationalized to create a conflict with Dr. Colizza's opinion that the accepted carpal tunnel syndrome and cervical sprain had ceased without residuals or with Dr. DiBenedetto's finding that appellant had no work restrictions related to the accepted conditions.²⁰

On appeal, counsel asserts that the medical evidence supported continuing work-related disability on and after February 18, 2007. However, as stated above, the medical record does not demonstrate that appellant was disabled for work on and after February 18 2007 due to the

¹⁶ See *Virginia Davis-Banks*, 44 ECAB 389 (1993); see also *Howard Y. Miyashiro*, 43 ECAB 1101 (1992).

¹⁷ *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁸ *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).

¹⁹ *Virginia Davis-Banks*, *supra* note 16.

²⁰ *Supra* note 15.

accepted cervical sprain and bilateral carpal tunnel syndrome. 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.

LEGAL PRECEDENT -- ISSUE 3

Where 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.²¹ A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.²² Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.²³ Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.²⁴ The opinion of the physician must be based on a complete factual and medical background of the claimant,²⁵ must be one of reasonable medical certainty²⁶ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.²⁷

ANALYSIS -- ISSUE 3

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome and a cervical sprain. In her July 10, 2012 reconsideration request, appellant asserted that OWCP should have expanded the claim to include herniated cervical discs, cervical radiculopathy and complex regional pain syndrome as diagnosed by Dr. Pena, an attending Board-certified orthopedic surgeon, and Dr. Singh, an attending Board-certified neurologist.

Appellant submitted numerous reports from attending physicians diagnosing a variety of cervical spine conditions. Dr. Pena found her totally and permanently disabled since November 2001 due to cervical disc disease with radiculopathy, which he attributed to repetitive arm motions at work. Dr. Singh, an attending Board-certified neurologist, found appellant permanently disabled beginning in August 2002 due to cervical radiculitis and carpal tunnel syndrome. He performed EMG and NCV studies from April 26, 2001 to June 21, 2007 showing mild cervical radiculopathy on the right at C5-6 and on the left at C6-7. Dr. Singh diagnosed

²¹ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

²² *See Katherine J. Friday*, 47 ECAB 591 (1996).

²³ *John W. Montoya*, 54 ECAB 306 (2003).

²⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

²⁵ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

²⁶ *Supra* note 23.

²⁷ *Judy C. Rogers*, 54 ECAB 693 (2003).

complex regional pain syndrome on January 15, 2010, triggered by the bilateral median nerve releases. He explained on July 1, 2012 that appellant's EMG tests and consistent complaints substantiated the diagnosis of complex regional pain syndrome. Appellant also submitted an October 2, 2007 report from Dr. DeRosa, an attending orthopedic surgeon, opining that repetitive lifting, reaching, pulling and pushing at work caused cervical disc degeneration and radiculitis.

Dr. Pena, Dr. Singh and Dr. DeRosa diagnosed cervical disc disease with herniations and radiculopathy. They attributed these conditions to upper extremity motions at work. However, the physicians did not explain how or why appellant's job duties would cause the cervical spine conditions or complex regional pain syndrome. This omission is critical in this case as appellant stopped work on April 25, 2000, prior to the diagnosis of the cervical conditions. In the absence of medical rationale explaining the pathophysiologic basis for causal relationship, the opinions of Dr. Pena, Dr. Singh and Dr. DeRosa are insufficient to meet appellant's burden of proof.²⁸

On appeal, appellant asserts that OWCP should have accepted the additional conditions and that her physicians' opinions should represent the weight of the medical evidence. However, as explained, her physicians did not provide sufficient rationale to establish that she sustained cervical disc herniations, cervical radiculopathy and complex regional pain syndrome due to factors of her federal employment.

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

OWCP properly terminated appellant's compensation and medical benefits effective February 18, 2007. Appellant also did not establish continuing work-related disability beginning February 18, 2007. Furthermore, she has not established that she sustained work-related cervical disc herniations, cervical radiculopathy and complex regional pain syndrome.

²⁸ *Supra* note 24.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 16, 2012 is affirmed.

Issued: January 24, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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