

its burden of proof to justify termination of compensation benefits, effective October 6, 2010, based on the reports of Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon and an OWCP referral physician.² By decision dated April 3, 2013, the Board affirmed OWCP's September 26, 2012 decision finding that appellant failed to establish continuing employment-related condition or disability after October 6, 2010.³ The facts and circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.

On December 11, 2013 appellant, through his attorney, requested reconsideration. He asserted that OWCP erred in determining that he had not presented sufficient evidence to support the claim for compensation. Appellant asserted he continued to have work-related residuals after October 6, 2010. He submitted a May 22, 2012 report from Dr. Jeffrey L. Brown, an osteopath, which had previously been submitted by appellant and considered by OWCP in its decision dated September 26, 2012.

In a decision dated March 11, 2014, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

Once OWCP meets its burden of proof to terminate appellant's compensation benefits, the burden shifted to him to establish that he had continuing disability causally related to his accepted employment injury.⁴ To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.⁵

ANALYSIS

The Board finds that appellant has not established that he has any continuing residuals of his work-related neck sprain, on or after October 6, 2010.

After the termination of benefits on October 6, 2010 and on reconsideration appellant resubmitted the May 22, 2012 report from Dr. Brown, which had previously been considered by

² Docket No. 11-1545 (issued March 2, 2012). Appellant's claim had been accepted for a neck sprain. Dr. Swartz's June 22, 2010 report noted an unremarkable examination of appellant's lumbar and cervical spine. He found that appellant had no residuals of the March 24, 2009 injury. A July 20, 2010 electromyogram (EMG) revealed mild chronic bilateral C5-6 radiculopathy with mild right ulnar nerve entrapment at the wrist. In a July 28, 2010 supplemental report, Dr. Swartz advised that appellant sustained a cervical strain as a result of the motor vehicle accident on March 4, 2009 and had preexisting degenerative disc disease in the cervical spine. He noted that the EMG found evidence of chronic mild bilateral L5-S1 radiculopathy which was not active or evident clinically. Dr. Swartz noted that appellant sustained a self-limiting soft tissue strain of the cervical spine related to his work injury which resolved and his current symptoms were attributable to his preexisting degenerative disease. Appellant had reached maximum medical improvement on June 22, 2010, was working his regular job full time as an aircraft mechanic and required no further medical treatment referable to his work injury.

³ Docket No. 13-116 (issued April 3, 2013).

⁴ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

⁵ *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

OWCP in its decision dated September 26, 2012 and the Board in its decision dated April 3, 2013. The Board previously found that this report was insufficient to meet his burden of proof.⁶ Appellant did not adequately explain how resubmission of this report on reconsideration served to meet his burden of proof.

The medical evidence submitted by appellant after the termination of benefits does not include a rationalized opinion sufficiently explaining the causal relationship between his current condition and his accepted work-related conditions. Consequently, appellant has not established that he had any employment-related condition or disability after October 6, 2010.

As the Board has previously reviewed this evidence the issue of its weight is res judicata and not subject to further consideration by the Board.

On appeal, counsel asserts that Dr. Brown provided support for causal relationship. As explained, however, the weight of that medical evidence has already been reviewed by the Board.⁷

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 further finds that appellant failed to establish that he had any continuing disability after October 6, 2010.

⁶ See *supra* note 3. *Clinton E. Anthony*, 49 ECAB 476 (1998).

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Worker's Compensation Programs dated March 11, 2014 is affirmed.

Issued: October 15, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board