

FACTUAL HISTORY

This matter has been previously before the Board. By decision issued March 7, 2014,³ the Board affirmed OWCP's August 21, 2013 decision denying appellant's claim for disability on intermittent dates from September 5, 2012 to January 25, 2013 due to her accepted left elbow tendinitis. The law and facts of the case as set forth in the Board's prior decision and order are incorporated by reference.⁴

During the pendency of the prior appeal, the record indicates that appellant stopped work on September 20, 2013. The employing establishment offered her a light-duty assignment as a modified letter carrier. The duties required lifting up to five pounds with the left arm. Appellant accepted the offer on September 23, 2013, but noted that she would be absent until October 14, 2013 because she was pregnant. She received compensation for total disability on the periodic rolls from September 22 to October 19, 2013.

Appellant returned to work and OWCP paid compensation for intermittent work absences through January 10, 2014 when there was no work available within her restrictions.

In an October 10, 2013 report, Dr. Matthew P. Steffes, an attending Board-certified orthopedic surgeon, diagnosed left upper extremity pain with lateral epicondylitis. He released appellant to light duty, with lifting limited to 10 pounds occasionally and with no repetitive motion of the left arm. An October 22, 2013 magnetic resonance imaging (MRI) scan of the cervical spine was within normal limits. On October 24, 2013 Dr. Steffes opined that appellant's left elbow had improved. He renewed prior work restrictions and prescribed physical therapy.

On October 25, 2013 OWCP obtained a second opinion from Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon. Dr. Obianwu reviewed the medical record and a statement of accepted facts. He reported appellant's complaints of fatigue and weakness of the left arm, pain in the left forearm, and in the lateral aspect of the left upper arm. Dr. Obianwu noted that she held her left arm close to her trunk with a flex wrist and extended fingers. He advised appellant that there was "nothing to gain" from such a posture. On examination of the left arm, Dr. Obianwu found no swelling, no atrophy, full range of elbow motion, no discomfort with resisted flexion or extension, no tenderness over the medial epicondyle, and no exquisite tenderness over the lateral epicondyle. Phalen's test was negative and neurologic examination was normal. Appellant had discomfort in the left forearm with resisted dorsiflexion of the left wrist.

Dr. Obianwu diagnosed a resolved soft tissue injury of the left upper extremity. He opined that appellant no longer had left elbow tendinitis because the tests, used to diagnose epicondylitis around the elbows were negative. Dr. Obianwu found no residuals from her accepted left elbow tendinitis because all the testing on examination was negative. He released

³ Docket No. 13-2114 (issued March 7, 2014).

⁴ Appellant, a then 31-year-old letter carrier, filed an October 4, 2012, a (Form CA-1) traumatic injury claim, alleging a left arm injury on June 27, 2012 when she tripped and fell while working. OWCP accepted left elbow tendinitis.

appellant to full duty as a letter carrier. Dr. Obianwu recommended a two-week work hardening program as she had “evidence of abnormal illness behavior,” as she carried her left arm in an unusual posture which was “not a true clinical presentation.” He noted that appellant’s subjective symptoms could have been due to laxity or weakness common in pregnancy.

In a November 21, 2013 report, Dr. Steffes diagnosed “[l]eft upper extremity pain with lateral epicondylitis.” He limited appellant’s lifting to 15 pounds occasionally, with no repetitive use of the left upper extremity. Dr. Steffes prescribed physical therapy.

In a December 16, 2013 letter, appellant disagreed with Dr. Obianwu. She stated that her left elbow condition had begun in June 2012 and was unrelated to her pregnancy. Appellant noted that her physicians both diagnosed left elbow tendinitis and claimed continued weakness and numbness in the left arm and hand.

On December 19, 2013 Dr. Steffes opined that appellant could continue on light duty, with lifting up to 20 pounds occasionally and no repetitive motion with the left arm.

By notice dated January 8, 2014, OWCP advised appellant of its proposal to terminate her wage-loss and medical compensation benefits as the accepted left elbow condition had ceased, based on Dr. Obianwu’s opinion. It afforded her 30 days to submit additional evidence or argument.

In response, appellant submitted her February 3, 2014 statement asserting that the accepted left elbow tendinitis remained active and partially disabling. She noted that she had stopped physical therapy, but continued to have weakness, fatigue, and pain in the left arm.

Appellant submitted additional medical evidence. In a September 12, 2013 report, Dr. Steffes noted that her left elbow had improved with physical therapy. He diagnosed left upper extremity pain with lateral epicondylitis. In a January 23, 2014 report, Dr. Steffes noted pain “about the medial and lateral elbow,” with mild tenderness at the medial lateral epicondyles. He reported that appellant had a full range of motion of the left elbow and shoulder. Dr. Steffes diagnosed left trapezial pain with medial/lateral epicondylitis. He noted that appellant’s condition had improved, but that her slow recovery might be related to pregnancy and reconditioning. Dr. Steffes released her to light duty, with occasional lifting up to 20 pounds.⁵

By decision dated February 11, 2014, OWCP terminated appellant’s wage-loss and medical compensation benefits effective that day, finding the accepted left elbow tendinitis had ceased without residuals and caused no continuing disability. It accorded the weight of the medical evidence to Dr. Obianwu, who provided a detailed report, based on a complete, accurate factual and medical history, explaining that the lack of objective findings on examination established that appellant no longer had left elbow tendinitis.

In a March 1, 2014 letter, appellant requested a telephonic oral hearing. She argued that left elbow tendinitis continued to disable her for full duty. Appellant contended that she had

⁵ Appellant also submitted copies of November 2013 physical therapy notes previously of record, and a medical tracking form.

submitted extensive medical documentation establishing that the condition had not resolved. During the hearing, held September 8, 2014, she asserted that OWCP improperly terminated her compensation benefits because she remained under active medical treatment and emphasized that Dr. Steffes had not released her to full duty.

Following the hearing, appellant submitted February 18 and March 18, 2014 reports from Dr. Steffes, which diagnosed left trapezial pain and medial/lateral epicondylitis. Dr. Steffes continued her light duty with lifting limited to 20 pounds and no repetitive movement of the left upper extremity. Appellant also provided physical therapy notes dated from March through December 2013. Dr. Steffes continued to authorize physical therapy from May 3, 2013 to January 28, 2014. On February 6, 2014 he approved appellant's discharge from physical therapy as of January 28, 2014. Appellant also submitted duplicates of Dr. Steffes' reports through January 2014 which were previously of record.

By decision dated and finalized December 2, 2014, OWCP hearing representative affirmed the February 11, 2014 termination, finding that Dr. Obianwu's opinion established that the accepted left elbow tendinitis had ceased without residuals. He noted that Dr. Obianwu explained in detail that appellant had no objective clinical signs of a left elbow condition and could return to full duty. The hearing representative found that appellant's physicians did not present objective findings or medical rationale explaining how and why she continued to be disabled for work from the accepted left elbow injury.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁶ 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.⁷ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁹ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.¹⁰

⁶ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁷ *Id.*

⁸ *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁹ *See T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹⁰ *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained left elbow tendinitis when she fell on a sidewalk on June 27, 2012. Appellant remained under medical care. Dr. Steffes, an attending Board-certified orthopedic surgeon, submitted reports from October 10, 2013 through January 23, 2014 reporting improved left elbow pain and left medial/lateral epicondylitis. He prescribed physical therapy and set out work restrictions. Dr. Steffes noted on September 12, 2013 that appellant's left arm symptoms and prolonged recovery could be due to her pregnancy. However, he did not identify objective clinical findings which demonstrated that the accepted condition remained active. Dr. Steffes did not explain his medical reasoning for supporting a continuing causal relationship between the accepted left elbow injury and appellant's ongoing condition. His opinion is therefore of diminished probative value.¹¹

OWCP obtained a second opinion from Dr. Obianwu, a Board-certified orthopedic surgeon, who found in an October 25, 2013 report that the accepted left elbow tendinitis had resolved without residuals. Dr. Obianwu found no objective signs of the accepted injury on examination. He based his opinion on a thorough clinical examination, a review of the medical record, and a statement of accepted facts. Dr. Obianwu provided medical reasoning explaining that appellant did not have left elbow tendinitis and that her clinical presentation was entirely normal. He noted "evidence of abnormal illness behavior" because she held her left arm in an unusual posture that was "not a true clinical presentation." The Board finds that OWCP properly terminated appellant's wage-loss and medical compensation benefits effective February 11, 2014, based on Dr. Obianwu's report as the weight of the medical evidence.

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.¹²

ANALYSIS -- ISSUE 2

OWCP properly terminated appellant's wage-loss and medical compensation benefits, effective February 11, 2014, based on the opinion of Dr. Obianwu, a Board-certified orthopedic surgeon and second opinion physician, who opined that the accepted left elbow tendinitis ceased without residuals. The burden then shifted to appellant to demonstrate that the accepted injuries caused continuing residuals or disability for work and after February 11, 2014.¹³

¹¹ *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹² *See Virginia Davis-Banks*, 44 ECAB 389 (1993); *see also Howard Y. Miyashiro*, 43 ECAB 1101 (1992).

¹³ *Id.*

Following the February 11, 2014 decision terminating appellant's wage-loss and medical compensation benefits, appellant submitted additional medical evidence. Dr. Steffes provided February 18 and March 18, 2014 reports diagnosing medial/lateral epicondylitis and trapezial pain. Although he limited appellant to light duty, he did not explain how the left elbow condition continued to partially disable her for work on and after February 11, 2014. Therefore, Dr. Steffes' opinion is of diminished probative value.¹⁴

Appellant also provided physical therapy notes dated from March 2013 through January 28, 2014, including her discharge from physical therapy on January 28, 2014. As Dr. Steffes signed these notes and they represent his medical opinion as a physician.¹⁵ Appellant also submitted duplicates of his reports through January 2014. These documents do not address her condition on and after February 11, 2014 and cannot establish continuing disability or residuals following OWCP's termination of her wage-loss and medical compensation benefits.

The Board finds that Dr. Obianwu's report continued to represent the weight of the medical evidence.

On appeal appellant asserts that she remained on restricted duty following her return to work on October 2013. She worked 30 to 40 hours a week. Appellant noted that her physician stated that her condition would improve over time. As stated above, she did not submit medical evidence that her condition on and after February 11, 2014 was related to the accepted left elbow tendinitis and tenosynovitis.

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 properly terminated appellant's wage-loss and medical compensation benefits effective February 11, 2014 as the accepted left elbow condition had ceased without residuals. The Board further finds that appellant has not established continuing disability or residuals of the accepted left elbow condition on and after February 11, 2014.

¹⁴ *Supra* note 11.

¹⁵ *Roy L. Humphrey*, 57 ECAB 238 (2005); *James Robinson, Jr.*, 53 ECAB 417 (2002) (where the Board held that as physical therapists are not physicians under FECA, their opinions are of no medical value unless signed and reviewed by a physician).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 2, 2014 is affirmed.

Issued: August 3, 2015
Washington, DC

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

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

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