

disability causally related to his January 14, 2010 employment injury; and (2) whether appellant established continuing disability relating to his accepted employment injuries after July 29, 2012.

FACTUAL HISTORY

On January 22, 2010 appellant, then a 55-year-old parcel post carrier, filed a traumatic injury claim alleging that on January 14, 2010 he fractured his left leg when he fell from the loading platform into a truck while loading parcels and packages. He stopped work and underwent surgery. OWCP accepted appellant's claim for left knee tibia plateau fracture. Appellant received compensation and was placed on the periodic rolls.

OWCP referred appellant, along with the statement of accepted facts and medical record, to Dr. Robert Orlandi, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether appellant continued to suffer from his accepted left leg fracture and whether he continued to be disabled from work. In a December 30, 2010 report, Dr. Orlandi reviewed appellant's history and conducted an examination. He reported that appellant's left knee was stable to valgus and varus stress and had good range of motion. Dr. Orlandi reported minor atrophy of the left knee but overall good results for the plate internal fixation of the left lateral tibial plateau fracture. He stated that appellant's prognosis was good but that he remained temporarily totally disabled from work. Dr. Orlandi recommended physical therapy and a follow-up examination in three months.

Appellant received continued treatment for a left knee effusion related to the left knee tibial plateau surgery from his treating physician Dr. Lon Weiner, a Board-certified orthopedic surgeon.

On April 6, 2011 OWCP referred appellant to Dr. Michael Katz, a Board-certified orthopedic surgeon, for another second opinion examination. In an April 28, 2011 report, Dr. Katz reviewed appellant's history and medical treatment following the January 14, 2010 employment injury. Upon examination of appellant's left knee, he observed no swelling or effusion within the knee and no medial or lateral joint line tenderness. Range of motion was normal. Dr. Katz stated that, although appellant's prognosis was good, he had a difficult time initiating with his left quadriceps. He recommended physical therapy and an electromyography (EMG) examination. Dr. Katz concluded that appellant was not able to work full duty but was capable of working five hours a day with limited standing or walking.

Pursuant to Dr. Katz's recommendation, appellant was referred to Dr. Michael Carciente, a Board-certified neurologist, for EMG testing. In a July 8, 2011 EMG report, Dr. Carciente related that appellant suffered a left tibial plateau fracture from a fall on January 14, 2010 and underwent surgery. He stated that appellant complained of weakness in the left leg and tingling in the left sole since the injury. Dr. Carciente found no evidence of localized nerve injury or entrapment neuropathy involving the left lower extremity. He reported that there were some nonspecific findings bilaterally which may suggest an underlying mild peripheral neuropathy and recommended clinical correlation.

In an updated April 28, 2011 report, Dr. Katz reviewed the July 2011 EMG report and related that there was no clear evidence of localized nerve injury or entrapment. He stated that

there were some nonspecific findings bilaterally, which have suggested mild peripheral neuropathy. Dr. Katz opined, however, that based on the testing appellant's condition was expected to resolve in approximately four months as his condition was improving. He recommended that appellant be reevaluated in September and continue with physical therapy to increase range of motion and strength.

OWCP referred appellant, together with a statement of accepted facts and the medical records, to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a further review and second opinion examination to determine the current extent of his employment-related injuries and any continuing disability. In his December 5, 2011 report, Dr. Sultan provided an accurate history of appellant's injury. He reviewed appellant's medical records and described the medical treatment he received. Dr. Sultan related appellant's complaints of difficulty ascending and descending stairs and of tingling over the plantar portion of the left foot. Upon examination of appellant's left knee, he observed a well-healed surgical scar. Dr. Sultan stated that the collateral and cruciate ligaments were stressed and found to be intact. Range of motion was normal. Dr. Sultan reported that patellofemoral crepitus with motion testing was +1 but the compression test was negative. He stated that appellant was able to ambulate without a crutch and his walking pattern was slow and steady. Dr. Sultan diagnosed left lateral tibial plateau fracture clinically healed after undergoing open reduction, internal fixation and physical therapy. He opined that appellant no longer had any residuals of his fracture and did not demonstrate any continuing disability. Dr. Sultan explained that orthopedic examination revealed that appellant was clinically stable and able to perform the duties of a parcel post carrier. He concluded that appellant did not need any additional medical treatment for his accepted condition and that he had reached maximum medical improvement.

In May 24, 2012 work capacity evaluation and attending physician reports, Dr. Weiner stated that appellant sustained a left tibial plateau fracture as a result of a January 14, 2010 fall at work. He indicated that appellant was not able to perform his usual job but was only capable of working in a sedentary position. Dr. Weiner reported that appellant had been disabled since January 14, 2010.

On June 14, 2012 OWCP proposed to terminate appellant's medical and wage-loss compensation benefits based on Dr. Sultan's December 5, 2011 second opinion report. It determined that the weight of the medical evidence rested with Dr. Sultan who determined that appellant's accepted left tibia plateau fracture had resolved and that he was no longer disabled from work as a result of his accepted condition.

Appellant submitted additional reports by Dr. Weiner. In a June 20, 2012 report, Dr. Weiner accurately described appellant's employment injury and the medical treatment he received. He stated that radiographs showed a healed fracture, but related that appellant continued to complain of weakness of his left quadriceps and tingling in his left foot. Dr. Weiner reported that, during the last examination appellant, had continued complaints of weakness and could not initiate extension of his left leg. He recommended a neurologic consultation and opined that appellant could not return to work until the neurologic evaluation and resolution of the problem.

In a June 28, 2012 statement, appellant disagreed with the June 14, 2012 proposal of termination. He stated that he still experienced weakness and a tingling sensation in his left foot. Appellant reported that he could only ascend and descend the stairs one step at a time. He pointed out that there were some nonspecific findings which suggested mild peripheral neuropathy and that nerve injury was not ruled out yet.

By decision dated July 19, 2012, OWCP finalized the termination of appellant's compensation and medical benefits effective July 29, 2012. It determined that the weight of the medical evidence rested with Dr. Sultan's December 5, 2011 report which determined that appellant's employment-related injuries had resolved and that he was capable of returning to work.³

On July 10, 2013 OWCP received appellant's request for reconsideration.⁴ In an attached statement, counsel alleged that it should not have relied on the second opinion examination of Dr. Sultan because his opinion was based on an incomplete and inaccurate history. He stated that Dr. Sultan's opinion was based solely on the accepted employment injury and not on the more significant neurological symptoms that appellant's physician wanted to be addressed by a neurologist. Counsel further contended that Dr. Weiner's reports established that appellant remained disabled from employment due to the employment injury and created a conflict in medical opinion regarding whether appellant continued to be disabled as a result of his accepted injury. Lastly, he alleged that OWCP failed to develop the evidence by not referring appellant for a neurological evaluation.

In a July 9, 2013 report, Dr. Weiner accurately described the January 14, 2010 employment injury and reviewed the medical treatment he received. He related that appellant had an uneventful postoperative recovery and that radiographs demonstrated that appellant's fracture had healed. Dr. Weiner stated that, since April 2010, appellant had complained of weakness of his left quadriceps and tingling at his left foot. He reported that EMG/nerve conduction velocity (NCV) examination did not reveal any specific nerve conduction abnormalities. Dr. Weiner stated that at the last office visit on June 19, 2012 appellant demonstrated continued quadriceps atrophy, severe difficulty initiating left knee extension, and paresthesia along the left foot. He opined that appellant's diagnosis could range from a central (primary brain/brain stem), stroke, or other neurologic abnormality despite a negative EMG/NCV examination. Dr. Weiner explained that a proper diagnosis could not be made by an orthopedic surgeon. He recommended that appellant see a neurologist in order to make a diagnosis for his chronic left leg weakness.

By decision dated September 17, 2013, OWCP denied modification of the July 19, 2012 denial decision.

³ The Board notes that the July 19, 2012 decision incorrectly referred to Dr. Katz, instead of Dr. Sultan.

⁴ Prior to appellant's reconsideration request, OWCP received a request for a hearing on August 21, 2012. By fax letter dated December 3, 2012, counsel requested a cancellation of the hearing. On December 12, 2012 OWCP granted appellant's request to withdraw his hearing request.

On September 5, 2014 OWCP received appellant's reconsideration request. Counsel stated that a detailed narrative medical report, not previously considered, was being submitted by Dr. Weiner, which would establish that appellant continued to suffer disability causally related to his January 14, 2010 employment injury.

In an August 6, 2013 report, Dr. Weiner described the January 14, 2010 employment injury and the medical treatment that appellant received. He stated that when he initially examined appellant on January 19, 2010 he observed swelling and tenderness over the lateral aspect of appellant's left knee. Dr. Weiner related that x-rays and computerized tomography scans revealed a comminuted left lateral tibial plateau fracture which resulted in surgery. He reported that appellant followed a standard postoperative recovery schedule and that radiographs showed an eventual healed fracture. Dr. Weiner stated that, since an April 20, 2010 examination, appellant had complained of left knee discomfort and tingling in addition to weakness of his left quadriceps. He reported that at appellant's last June 19, 2012 examination, he observed continued quadriceps atrophy and severe difficulty initiating left knee extension. Dr. Weiner explained that appellant's fracture had healed in an anatomic position but appellant had symptoms of persistent weakness of his left quadriceps muscle group and paresthesia of the left foot. He explained that appellant's current primary complaints of left knee and leg weakness would cause future sequelae and that altered biomechanics, secondary to motor weakness could lead to undue stress. Dr. Weiner opined that, because of appellant's initial trauma and subsequent surgery, he was at high-risk for developing post-traumatic arthritis. He stated that appellant could develop inflammation or severe tendinitis as a result of the hardware at the lateral proximal tibia and could need further surgery.

By decision dated November 12, 2014, OWCP denied modification of the September 17, 2013 decision.

LEGAL PRECEDENT -- ISSUE 1

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.⁵ OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁶ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁸ To terminate authorization for medical treatment, OWCP must

⁵ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁶ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁷ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁸ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁹

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for left tibial fracture. Appellant stopped work and received disability and medical benefits. By decision dated July 19, 2012, OWCP terminated his medical and disability compensation benefits based on the December 5, 2011 second opinion report of Dr. Sultan which concluded that appellant's accepted condition had resolved and that he was no longer disabled due to the January 14, 2010 employment injury. The Board finds that it met its burden of proof to terminate appellant's compensation and medical benefits.

OWCP referred appellant's claim to Dr. Sultan for a second opinion examination to determine whether appellant continued to suffer residuals of his employment injury and the necessity of his medical treatment. In a December 5, 2011 report, Dr. Sultan reviewed appellant's history of injury, medical treatment, and the statement of accepted facts concerning the January 14, 2010 injury. Upon examination of appellant's left knee, he observed normal range of motion and stated that collateral and cruciate ligaments were intact. Dr. Sultan reported that patellofemoral crepitus with motion testing was +1 but the compression test was negative. He stated that appellant was able to ambulate without a crutch and his walking pattern was slow and steady. Dr. Sultan diagnosed left lateral tibial plateau fracture clinically healed. He opined that appellant no longer had any residuals of his fracture and did not demonstrate any continuing disability. Dr. Sultan reported that orthopedic examination revealed that appellant was clinically stable and able to perform the duties of a parcel post carrier.

The Board has held that the weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹⁰ In this case, Dr. Sultan accurately described the history of injury and explained that there were no objective findings to establish that appellant had any continuing employment-related residuals or disability causally related to his accepted left tibial plateau fracture. The Board finds that his opinion is detailed, well-rationalized, and based upon a complete and accurate history. Therefore, the Board finds that Dr. Sultan's opinion represents the weight of the medical evidence and establishes that appellant no longer had any residuals or disability from his January 14, 2010 employment injury.

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to him to establish continuing disability causally related to his accepted

⁹ *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

¹⁰ *See K.W.*, 59 ECAB 271 (2007); *Ann C. Leanza*, 48 ECAB 115 (1996).

employment injury.¹¹ To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, appellant must establish by the weight of the reliable, probative, and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.¹²

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹³ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident.¹⁴ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹⁵

ANALYSIS -- ISSUE 2

The Board further finds that appellant has not established continuing disability causally related to his January 14, 2010 employment injury.

Following the termination of his benefits by OWCP, appellant submitted various reports by Dr. Weiner dated May 14, 2012 to August 6, 2013. Dr. Weiner stated that appellant sustained a left tibial plateau fracture on January 14, 2010 when he fell at work and remained totally disabled. In a July 9, 2013 report, he related that since April 2010 appellant had also complained of weakness of his left quadriceps and tingling in his left foot. Dr. Weiner explained that, although the last EMG/NCV examination did not reveal any specific nerve conduction abnormalities, appellant's diagnosis could vary from central brain condition, stroke, or other neurologic abnormality. In an August 6, 2013 report, he reported that although appellant's fracture had healed in an anatomic position he still had symptoms of persistent weakness of his left quadriceps muscle group and paresthesia at the left foot. Dr. Weiner explained that appellant's current primary complaints could cause future sequelae and that altered biomechanics, secondary to motor weakness, could lead to undue stress. He opined that because of appellant's initial trauma and subsequent surgery he was at high risk for developing post-traumatic arthritis.

¹¹ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

¹² *I.J.*, 59 ECAB 408 (2008).

¹³ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-658 (issued October 22, 2009); *D.I.*, 59 ECAB 158 (2007).

¹⁴ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁵ *D.S.*, Docket No. 09-860 (issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007); *Solomon Polen*, 51 ECAB 341 (2000).

The Board notes that Dr. Weiner provided an accurate history of injury and examination findings. Although he opines that appellant remained disabled since January 2010, Dr. Weiner relates appellant's current inability to work to the symptoms of weakness and tingling and the development of post-traumatic arthritis. Neither of these conditions have been accepted as work related.¹⁶ The Board notes that Dr. Weiner acknowledges that appellant's left tibial plateau fracture had healed. Dr. Weiner failed to explain, based on medical rationale, how appellant was unable to work as a result of his accepted left leg condition. A claimant is only entitled to compensation for as long as he can establish that his disability or necessity of medical treatment is causally related to the accepted employment injury.¹⁷ Because Dr. Weiner fails to relate appellant's inability to work to his accepted condition, his opinion fails to demonstrate that appellant remained disabled from work. Further, as to Dr. Weiners suggestion of possible further sequelae, the Board has consistently held that the possibility of a future injury does not constitute an "injury" under FECA.¹⁸

On appeal, counsel alleges that Dr. Weiner's August 6, 2013 report establishes that at the time of the termination of benefits, appellant continued to suffer disability causally related to his employment. As previously noted Dr. Weiner's opinion is of limited probative value and is insufficient to establish that appellant remained unable to work as a result of the January 14, 2010 employment injury.

Accordingly, OWCP has met its burden of proof to establish that appellant no longer continues to suffer residuals of his accepted January 14, 2010 left leg injury. There is no medical evidence contemporaneous with the termination of his benefits which supports that he has any continuing residuals related to his accepted condition. Accordingly, the Board finds that OWCP properly terminated appellant's right to compensation and medical benefits.

CONCLUSION

The Board finds that OWCP met its burden of proof to justify termination of appellant's wage-loss and medical benefits effective July 29, 2012. The Board also finds that appellant failed to establish that he had any continuing residuals or disability causally related to his accepted employment injuries after July 29, 2012.

¹⁶ The Board noted that Dr. Weiner's opinion that appellant suffers from these conditions is offered in speculative terms and thus of diminished probative value. *Kathy A. Kelly*, 55 ECAB 206 (2004).

¹⁷ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

¹⁸ *Barbara A. Dunnivant*, 48 ECAB 517 (1997).

ORDER

IT IS HEREBY ORDERED THAT the November 12, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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