United States Department of Labor
Employees' Compensation Appeals Board

V.A., Appellant	)	
and	)	**Docket No. 15-1073**
	)	**Issued: November 25, 2015**
DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, Dallas, TX, Employer	)	

Appearances:
Lenin V. Perez, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 7, 2015 appellant, through her representative, filed a timely appeal from a March 9, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to justify termination of appellant's wage-loss compensation and medical benefits for her accepted injuries effective July 3, 2013; (2) whether appellant has established that she had continuing disability after July 3, 2013.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 29, 1996 appellant, then a 44-year-old field representative, filed a claim for traumatic injury (Form CA-1), alleging injuries to her head, back, shoulders, wrists, knee, foot, ankle, and hand that occurred when she fell down stairs on October 9, 1996. OWCP accepted the claim for lumbar sprain, right knee contusion, traumatic left temporomandibular joint injury, traumatic bilateral carpal tunnel syndrome, right knee osteochondral fracture, ganglion cyst of the right wrist, and loss of teeth.[2] Appellant stopped work on October 10, 1996.

On April 28, 1997 appellant was placed on the periodic rolls for compensation benefits.

Through the years appellant continued to receive medical treatment from Dr. Reed Stone, a Board-certified neurologist, and Dr. Jeffrey L. Katzell, an orthopedic surgeon.

In a progress report dated October 14, 2009, Dr. Katzell related that appellant was seen for follow-up evaluation for flare up of back pain with radiation to the back of her knee and calf. He related that appellant's problems were caused by her work injury, over a decade ago. Dr. Katzell explained that over five years ago a magnetic resonance imaging (MRI) scan showed stenosis at L4-5, and L5-S1. He further related that appellant now had so much spasm, recurrence of back pain and leg radiculopathy, that she could not even lie in bed without exacerbation of her symptomatology. Dr. Katzell noted that a recent MRI scan showed herniated discs with stenosis.

Dr. Stone related in a January 18, 2010 progress note that appellant was seen for ongoing hand complaints, was being treated for carpal tunnel syndrome, and now had a trigger finger of the right hand.

In a progress note dated March 3, 2010, Dr. Katzell related that appellant had developed work-related post-traumatic knee arthritis, flexion contracture of the right knee with retropatellar tenderness, a Baker's cyst, posterior swelling, restricted knee flexion and extension. He also noted that, because of the flexion contracture, she had altered her gait and had worse back pain, with radiculopathy to the right leg with spasm, positive leg raise, and restricted flexion.

To obtain current medical evidence related to appellant's capacity to work, OWCP referred her for a second opinion examination. On June 9, 2010 a workers' compensation specialist for the employing establishment sent OWCP a letter and a video disc. The specialist noted that "Although [appellant's] physician has asserted that she is totally disabled from all employment, the video [depicts appellant] walking, bending, stooping, lifting, carrying, twisting, turning, sweeping, [and] reaching -- demonstrating her ability to do virtually the entirety of the physical required of her regular job as a Field Representative." Enclosed along with the letter was an investigation report, which described the occurrences on the surveillance video.

In the second opinion report dated June 11, 2010, Dr. Kirk E. Maes, a Board-certified orthopedic surgeon, stated "I believed that the predominance of her current symptoms are exaggerated and primarily related to the degenerative process, and are no longer significantly

[2] The Board notes that the original decision accepting appellant's injuries does not appear in the case record.

related to the work injury. I believe the work injury should be closed and she should be left to be disabled from an arthritic standpoint related to a primary degenerative process not a post-traumatic process."

OWCP determined that a conflict in the medical evidence existed between appellant's treating physicians (Dr. Stone and Dr. Katzell) and Dr. Maes. It arranged for an impartial medical examination in order to resolve the conflict, but canceled the appointment due to the receipt of new video evidence from the employing establishment. OWCP sent the new evidence and a statement of accepted facts to Dr. Maes' for issuance of an addendum report.

On January 11, 2011 OWCP sent appellant's former counsel, Paul Felser, a copy of the case file on both CD-ROM and paper.

Dr. Maes issued his addendum report on February 17, 2011. In his report, he noted:

> "I do not believe that any of [appellant's] alleged disability stems from the work injury. I originally believed that she was disabled, in large part from a psychosocial standpoint, and not due to any physical abnormalities. I now believe that [appellant] has no disability at all and is malingering. She has a 14-year history of nonwork and complaints of chronic pain which is no longer causing any obvious disability.[...] [Appellant's] exaggeration of pain in the arms and knees, and to a lesser extent in the back has been chronic. I believe that the cause of this pain is predominantly degenerative and psychosocial and is not causing any disability at all.[...] The current video surveillance totally supports this opinion."

Dr. Maes also stated:

> "I believe [appellant's] prognosis is exceptionally poor. She has not returned to work since the time of her original injury. [Appellant] has been classified as totally and permanently disabled, but I believe this is an error. She is apparently on social security and Medicare (according to her report.) I would not offer [appellant] any further treatments from a Workers' Compensation standpoint. Her ongoing issues are degenerative and psychosocial, or fabricated, and are not related to her original injury in 1996."

On April 1, 2011 OWCP forwarded Dr. Maes' report to Dr. Reed Stone, appellant's primary treating physician of record and a Board-certified psychiatrist and neurologist, for commentary. On April 19, 2011 Dr. Stone responded, noting that appellant underwent osteochondral grafting of her right knee medial femoral condyle in 1998, a procedure that he stated would not have been performed but for a full-thickness cartilaginous lesion. He further noted that a February 1, 2011 MRI scan performed on appellant's left knee revealed objective findings of chondromalacia of the patella, a focal cartilage fissure, and chondromalacia of the lateral femoral condyle. Dr. Stone recommended additional MRI scans of the right knee and arthroscopic evaluation of the left knee. He noted, "[A]t this time, I cannot clearly determine the cause of her left knee condition and, in particular, determine whether or not it is related to her [w]orkers' [c]ompensation injury."

By letter dated April 1, 2011, OWCP sent a copy of the video evidence submitted by her employing establishment to appellant's former counsel and enclosed it along with that letter.

In a second opinion report dated August 17, 2012, Dr. Sorrell I. Strauss, a dentist, examined appellant's right temporomandibular joint. He noted that she had 85 percent motion in all normal directions. Dr. Strauss stated that appellant's diagnosed condition was directly caused by the 1996 injury and recommended additional treatment.

In a second opinion report dated August 13, 2012, Dr. Peter Millheiser, a Board-certified orthopedic surgeon, examined the records of appellant's treatment and conducted a physical examination. He reviewed the video surveillance and opined that appellant's subjective complaints outweighed her orthopedic findings. Dr. Millheiser noted that appellant had related that she could only perform minimal activities around her house and that if she went out or worked in the garden she would have severe pain. However, the surveillance video obtained on May 1 and October 18, 2010 showed that appellant was able to walk normally outside. Dr. Millheiser noted:

> "[Appellant] hung a basket full of plants. She stood bent over and could arise from a bent over position apparently without problems. [Appellant] could carry objects. She could help someone unload a framed door from the rear of a vehicle. This involved lifting the door as well. [Appellant] carried half the door entering into a garage. She bent over to look at objects to put into a garbage container. [Appellant] was able to get in and out of a vehicle and lay and bend without problems. She was noted to be bent over gathering things on numerous occasions. [Appellant] walked without difficulty to a neighbor's house. She was able to carry some object to the neighbor's house. [Appellant] was able to use a broom and walk back in front of the garage. She could bend to pick up potted plants and carry them to the side of the house with walking."

Dr. Millheiser concluded that appellant exaggerated her complaints. He indicated that [she] should be evaluated by a psychiatrist to make sure that she was taking the proper medications. As far as activities were concerned, appellant's only limitations would be due to the right knee osteoarthritis. Therefore Dr. Millheiser concluded that appellant was capable of performing light-duty work with restrictions.

On September 13, 2012 OWCP requested clarification of Dr. Strauss' August 17, 2012 report. Dr. Strauss clarified by letter dated October 19, 2012, noting that appellant would need continued splint therapy and possibly surgery, though noting that "surgery is highly unlikely." He clarified that her dental injury would not preclude her from performing her date-of-injury position or participating in vocational rehabilitation.

By letter dated January 24, 2013, OWCP notified appellant that it had scheduled an appointment with a referee examiner to resolve a conflict in the medical evidence.

On January 11, 2013 appellant requested a copy of her entire case record, including the video surveillance provided by the employing establishment. She also requested to participate in the process for selection of an independent medical examiner (IME). On January 17, 2013

OWCP replied, noting that appellant needed to provide a valid reason for requesting participation, including but not limited, to documented bias.

On January 29, 2013 OWCP requested a copy of the surveillance video from the employing establishment, noting that it had mailed its last copy with a referral to a referee examiner. It informed appellant that it did not have an extra copy to provide to her by letter of the same date.

By letter dated February 14, 2013, appellant stated that the selected IME physician, Dr. Ian Fries, a Board-certified orthopedic surgeon, was biased because he appeared to rely largely on IMEs for income, did not have a regular practice, and had addressed the American Academy of Orthopedic Surgeons as a public speaker on the issue of work-related injuries.

OWCP responded to appellant's February 14, 2013 letter on February 22, 2013. It noted that she was allowed the opportunity to provide evidence regarding selection of Dr. Fries as an IME. OWCP found that she had not provided a valid reason to support her request to participate in the selection process, noting that her claim that Dr. Fries may be biased was unfounded. It stated, "You have not provided any documented evidence to substantiate this. Your perceptions do not have a factual basis." Regarding appellant's claim that Dr. Fries did not have a regular practice, OWCP noted, "Dr. Fries is Board-certified [and] it is logical that any entity, which requests an opinion from a specialist, regardless of the field of expertise [...] is willing to pay a fee to obtain an unbiased expert's opinion on the matter. This is nothing new. Dr. Fries is being paid a fee to conduct an [i]ndependent [m]edical [e]xamination."

In a referee report dated March 1, 2013, Dr. Fries extensively reviewed appellant's medical history and conducted an examination. He noted that "none of her current diagnoses are medically connected to the October 9, 1996 slip and fall. Several diagnoses mentioned in appellant's records including right de Quervain's tendinitis, complex regional pain syndrome, and a right volar wrist ganglion are no longer viable considerations." In reviewing Dr. Stone's reports, he noted that Dr. Stone had included a summary of a handwritten report from a psychiatrist regarding appellant's daughter's psychiatric conditions. Dr. Fries did not use this information in the evaluation of appellant's conditions. He stated:

> "The charade lasted more than sixteen years. [Appellant] does not have current pathology reasonably related to her unwitnessed October 9, 1996 accident. She does not have any condition -- related or unrelated to that fall -- rendering her fully disabled from gainful employment. Degenerative arthritis of her knees might be considered in restrictions of ambulation, stair climb, and squatting, as well her age and obesity may be factors. However, video evidence does not support any work restrictions."

Regarding her capability to return to gainful employment, Dr. Fries noted, "Yes, she is capable of gainful employment based upon the lack of objective findings of impairment, and video evidence." Regarding appellant's capability for vocational rehabilitation, he concluded, "It is unlikely rehabilitation will change her employability, as the main factor limiting her is her claimed intolerance to any work." Appellant noted to Dr. Fries that she had not seen the video, and explained that on May 1, 2010, she took two Vicodin prior to helping her husband with a

garage door. Dr. Fries noted that this did not explain the findings of the March 18, 2010 video. Regarding the findings of the video, he noted,

> "On March 18, 2010 [appellant] is seen in her garden bending over to the ground. May 1, 2010 outside her garage, she and her husband lift a full door and door frame assembly from the back of an SUV, and move it into their garage. [Appellant] later helps her husband place the door assembly in the door opening, demonstrating good bilateral hand strength.
>
> "[Appellant] ambulates normally during the entire video without resting, and without knee supports. She bends to the ground multiple times, without hesitation.
>
> "[Appellant] folds towels on the SUV floor that were under the door assembly. She picks up objects from the ground. [Appellant] carries a load of towels into the garage from the SUV. She bends multiple times to 90 degrees over a garbage can to inspect objects. [Appellant] reaches overhead to close the SUV hatch back.
>
> "[Appellant] easily enters the SUV driver's seat, and repositions it from the side of the garage to the front garage section. She then exits the SUV with no difficulty, flexing and extending her knees, and then uses right and left hands to open the door latches, and then the back SUV door. [Appellant] shakes out a towel with both hands. She carries a tool case across the street. [Appellant] assists [in] placement of the door hardware using both hands. She sweeps the front garage apron.
>
> "[Appellant] dons work gloves, and carries garden supplies in both hands. She bends over touching the bottom of a garden fence."

In a report dated June 19, 2013, Dr. Samy Bishai, Board-certified in emergency medicine, responded to Dr. Fries' independent medical report. He stated that the length of the report and medical history "in itself is a testament to [appellant's] long-standing chronic problems that she suffered as a result of the injuries of October 9, 1996. The majority of her treating physicians have clearly indicated and diagnosed all the medical problems she is going through as a result of the injuries of October 9, 1996." Dr. Bishai noted that objective tests reviewed by Dr. Fries indicated that appellant had severe disabling arthritis. He further took issue with Dr. Fries' statement that she complained of her right knee joint injury 19 days after a fall, noting that she filed a traumatic injury claim immediately. He stated, "It is my opinion, within a reasonable degree of medical certainty, that the osteochondral fracture is directly the result of the injury that the patient sustained in the accident of October 9, 1996." Dr. Bishai opined that appellant needed a total knee replacement, and noted that she had not been afforded the opportunity to view the surveillance videos.

On May 24, 2013 OWCP proposed to terminate appellant's compensation for medical benefits and wage loss due to the orthopedic conditions, finding that the weight of the medical evidence established no continuing residuals of her work-related conditions. It noted that medical benefits for her oral injuries, *i.e.*, temporomandibular joint disorder and broken teeth,

would not be terminated for additional medical treatment, and that these injuries did not preclude her from full-duty work.

By letter dated June 23, 2013, appellant stated that she still had not received a copy of the video surveillance evidence. She stated that her former attorney had requested a copy in writing, but that it was never received. Appellant noted, "Without it I do not possess complete medical evidence as I am entitled to. I wish to make comments about the video and enter the comments into my file and cannot without first viewing the video."

By decision dated July 2, 2013, OWCP terminated appellant's medical and wage-loss benefits effective July 3, 2013, based upon Dr. Fries' independent medical examination.

By letter dated July 2, 2013, OWCP sent the original video surveillance of appellant from the employing establishment to her, noting that it did not have another copy.

On July 6, 2013 appellant requested an oral hearing before an OWCP hearing representative. Appellant resubmitted medical evidence from her physicians in support of her request, as well as a statement noting that she had not received a copy of the surveillance video and that the activities on the video were "emergency in nature."

The hearing was held on December 9, 2013. Appellant repeated her claims that she had not been provided with a copy of the video surveillance prior to OWCP's decision to terminate her compensation. She noted that Dr. Maes had not mentioned the video in his initial report, that he had stated that she was totally disabled in his initial report, and that he had submitted an addendum report after viewing the video. Appellant stated that she had never been charged with fraud. Appellant's representative stated that showing the physicians video surveillance of appellant "tainted the doctors' opinions." Appellant's current representative noted that her response to her activities in the videos would be that "she was taking Vicodin when she was helping her husband, and she didn't do anything but drag a door for about three feet." He further noted that the video was edited, stating that "they only showed like segments that they wanted to show."

By letter dated January 7, 2014, the employing establishment offered comments in response to the December 9, 2013 hearing. It noted that OWCP had sent a copy of the video surveillance to appellant's counsel along with a letter dated April 1, 2011. The employing establishment further noted that the investigative report, including a full description of the surveillance video, had been sent to appellant along with the entire case file on January 11, 2011.

By letter dated January 16, 2014, appellant's former counsel, Paul Felser, noted that "Our records do not reflect the receipt of any video documentation from either the Department of Labor or your employing agency."

On January 27, 2014 appellant provided OWCP with a statement, noting that she had not yet received a copy of the transcript of the hearing, and stating, "I have never been charged with any crime or fraud charges; therefore, that clears me of any wrongdoing."

By decision dated February 5, 2014, the hearing representative affirmed OWCP's July 2, 2013 termination of benefits. She noted that on April 1, 2011, OWCP sent a copy of the video

surveillance to "David Felser" at the correct address for Paul Felser. Appellant was also sent a copy of the video at her correct address. The hearing representative found that the video surveillance had been provided to appellant's prior counsel and appellant and presumed received under the mailbox rule and that appellant had been afforded an opportunity to comment and actually weighed in on the contents of the video surveillance at the hearing.

On July 24, 2014 appellant, through her representative, requested reconsideration of the decision dated February 5, 2014. He reiterated earlier arguments that appellant had not been afforded the opportunity to comment on the contents of the video surveillance prior to termination of her benefits. Along with the request, appellant resubmitted voluminous records of evidence.

In an office note dated August 23, 2012, Dr. Steven Saslow, a Board-certified orthopedic surgeon, noted that he had performed an injection on appellant's right knee.

On March 14, 2014 Dr. Eduardo Gonzalez, an anesthesiologist, diagnosed appellant with cervical disc syndrome with radiculopathy; lumbar disc syndrome with radiculopathy; internal derangement of the right and left shoulder joints; internal derangement of the right and left knee joints; internal derangement of the left hip joint; bilateral carpal tunnel syndrome; and temporomandibular joint disorder and internal derangement.

In a report dated May 8, 2014, Dr. Stone diagnosed appellant with thoracic or lumbosacral neuritis or radiculitis; displacement of lumbar intervertebral disc without myelopathy; reflex sympathetic dystrophy of the upper limb; and carpal tunnel syndrome.

By decision dated March 9, 2015, OWCP performed a merit review of appellant's entire case file and found that she had not submitted sufficient medical evidence to overcome the weight afforded to Dr. Fries' medical opinion. It therefore denied modification.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[3] After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[4] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.[5]

FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint

[3] *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001); *Alice J. Tysinger*, 51 ECAB 638, 645 (2000).

[4] *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

[5] *Id.; Leonard M. Burger*, 51 ECAB 369 (2000).

a third physician who shall make the examination.[6] The implementing regulations state that if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee or impartial examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[7]

To be of probative value, a medical opinion must be based on a complete factual and medical background, must be of reasonable medical certainty, and be supported by medical rationale.[8] Medical rationale is a medically sound explanation for the opinion offered.[9]

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[10]

In the absence of evidence to the contrary, it is presumed that a notice mailed to an addressee in the ordinary course of business was received by the addressee.[11] The appearance of a properly addressed copy in the case record, together with the mailing custom or practice of the sender, will raise a presumption that the original was received by the addressee. This is known as the mailbox rule.[12]

ANALYSIS -- ISSUE 1

In the present case, OWCP found that a disagreement existed between Drs. Katzell and Stone, appellant's primary physicians of record, and Drs. Maes and Millheiser, second opinion physicians, as to whether appellant continued to have residuals of her October 9, 1996 employment injury.

In accord with 5 U.S.C. § 8123(a), OWCP referred the case to Dr. Fries for a referee examination and an opinion as to whether appellant continued to have employment-related residuals. In his March 1, 2013 report, Dr. Fries noted that "none of her current diagnoses are medically connected to the October 9, 1996 slip and fall.[...] The charade lasted more than sixteen years. [Appellant] does not have current pathology reasonably related to her unwitnessed October 9, 1996 accident. She does not have any condition -- related or unrelated to that fall --

[6] 5 U.S.C. § 8123(a).

[7] 20 C.F.R. § 10.321.

[8] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

[9] *See Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator that the conclusion drawn is rational, sound, and logical).

[10] *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

[11] *See Larry L. Hill*, 42 ECAB 596, 600 (1991).

[12] *S.A.*, Docket No. 14-1345 (issued December 15, 2014).

rendering her fully disabled from gainful employment. Degenerative arthritis of her knees might be considered in restrictions of ambulation, stair climb, and squatting, as well her age and obesity may be factors. However, video evidence does not support any work restrictions."

Appellant previously had questioned Dr. Fries on the issue of bias and requested that OWCP involve her in the referee selection process. OWCP responded formally on February 14, 2013, finding that appellant had not provided evidence of Dr. Fries' bias such that OWCP was required to involve her in the selection process. The Board finds that OWCP properly denied appellant's request.[13]

In a report dated June 19, 2013, Dr. Bishai responded to Dr. Fries' independent medical report. He stated that the length of the report and medical history "in itself is a testament to [appellant's] long-standing chronic problems that she suffered as a result of the injuries of October 9, 1996. The majority of her treating physicians have clearly indicated and diagnosed all the medical problems she is going through as a result of the injuries of October 9, 1996." Dr. Bishai noted that objective tests reviewed by Dr. Fries indicated that appellant had severe disabling arthritis. He further took issue with Dr. Fries' statement that she complained of her right knee joint injury 19 days after a fall, noting that she filed a traumatic injury claim immediately. Dr. Bishai stated, "It is my opinion, within a reasonable degree of medical certainty, that the osteochondral fracture is directly the result of the injury that the patient sustained in the accident of October 9, 1996." He opined that appellant needed a total knee replacement, and noted that she had not been afforded the opportunity to view the surveillance videos.

The Board finds that Dr. Fries provided a rationalized medical opinion in this case. The number of physicians finding disability and the length of time over which appellant's case was accepted is irrelevant to whether Dr. Fries' opinion was rationalized. Only his reasoning and interpretation of the evidence is relevant. Dr. Fries extensively documented appellant's prior medical history and gave well-supported reasons for finding that appellant was no longer suffering residuals of her work-related injury. As a referee physician, Dr. Fries' report is entitled to special weight.

Regarding appellant's accepted temporomandibular joint disorder, the Board notes that Dr. Fries did not make findings regarding this condition. OWCP's second opinion physician, Dr. Strauss had related on August 17, 2012 that appellant still required medical treatment of this condition. He clarified in his October 19, 2012 report that this condition did not disable appellant. In the preliminary notice of termination of benefits OWCP stated that appellant would continue to receive medical benefits for this condition. The Board concludes that while the final termination decision of July 2, 2013 was silent regarding this condition, appellant remains

[13] Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.4(f) (July 2011). OWCP's procedures provide that a claimant who asks to participate in selecting the referee physician or who objects to the selected physician should be requested to provide his or her reason for doing so. OWCP is responsible for evaluating the explanation offered. Examples of circumstances under which the claimant may participate in the selection include (but are not limited to): (a) Documented bias by the selected physician; (b) Documented unprofessional conduct by the selected physician; (c) A female claimant who requests a female physician when a gynecological examination is required; or (d) A claimant with a medically documented inability to travel to the arranged appointment when an appropriate specialist may be located closer.

entitled to medical benefits for her accepted temporomandibular joint disorder and the evidence establishes that it does not prevent a return to work.

The Board finds that OWCP met its burden of proof to terminate wage-loss compensation and medical benefits effective July 3, 2013, with the exception of medical benefits for her accepted temporomandibular joint disorder.

On appeal, counsel argues that appellant's procedural rights were deprived because she was unable to view the surveillance video taken of her by the employing establishment before her benefits were terminated. He further argues that Dr. Fries' report improperly relies upon medical evidence that actually belonged to appellant's daughter.

As noted above, the mailbox rule provides that the appearance of a properly addressed copy in the case record, together with the mailing custom or practice of the sender, will raise a presumption that the original was received by the addressee.[14] The record contains a properly addressed copy of the video evidence submitted by her employing establishment to appellant's former counsel, dated April 1, 2011, which was also sent to appellant's address of record.[15] As such, the Board finds that the mailbox rule raises the presumption that such video evidence was received by appellant and her former representative. Mr. Felser's letter of January 16, 2014 is not sufficient to rebut this presumption. Furthermore, the Board notes that appellant received an investigative report containing a full summary of the events on the surveillance tapes on January 11, 2011, and that she was afforded the opportunity to respond, and actually responded to, the contents of the tapes in her hearing of December 9, 2013. As such, she was not deprived of any procedural rights.

Regarding counsel's accusation that Dr. Fries' report improperly relied upon medical evidence belonging to appellant's daughter, the Board notes that he was quoting from Dr. Stone's report and actually noted that this evidence did not belong to appellant. Dr. Fries did not rely upon this evidence in his finding that appellant no longer suffered residuals of her work-related injury.

The Board therefore finds that OWCP met its burden of proof to terminate appellant's wage-loss and medical benefits as of July 3, 2013.

LEGAL PRECEDENT -- ISSUE 2

After termination of benefits clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to the claimant. To prevail, the claimant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability which continued after termination of compensation benefits.

[14] *Supra* note 11.

[15] The letter was properly addressed to Attorney Felser, at the correct P.O. Box, city, state and zip code. Although the first name of Mr. Felser was David not Paul, the Board finds this harmless error. The Board notes that the letter with the copy of the surveillance video was not returned to OWCP as undeliverable.

ANALYSIS -- ISSUE 2

Following the termination of her compensation benefits appellant submitted additional medical evidence. In an office note dated August 23, 2012, Dr. Saslow noted that he had performed an injection on appellant's right knee. As this report predated the termination of benefits and offered no opinion regarding causal relationship, it is of no probative value regarding the issue of appellant's continuing disability after July 3, 2013.

Appellant also submitted a March 14, 2014 report from Dr. Gonzalez and a May 8, 2014 report from Dr. Stone. These physicians diagnosed a number of cervical, lumbar, shoulder, knee, and hip conditions, as well as carpal tunnel syndrome, and temporomandibular joint disorder. Neither physician however offered a rationalized medical opinion explaining how these conditions were causally related to appellant's accepted October 9, 1996 employment injury, or why any of these conditions would cause continuing disability. These reports are therefore of diminished probative value.[16]

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 met its burden of proof to terminate wage-loss compensation and medical benefits effective July 3, 2013, except that appellant remains entitled to medical benefits for her accepted right temporomandibular joint condition. The Board further finds that appellant has not established continuing disability on July 3, 2013.

[16] *See I.J.*, 59 ECAB 408 (2008).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 9, 2015 is affirmed as modified.

Issued: November 25, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board