

On appeal counsel contends that the statement of accepted facts (SOAF) was deficient, that OWCP usurped the function of its medical adviser, and that the second opinion physician submitted an unrationalized report. He also contends that OWCP did not address any of his arguments in its very brief decision.

FACTUAL HISTORY

On March 21, 2012 appellant, then a 46-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 14, 2012, after collecting and preparing incoming mail, she felt pain in her neck and upper back, accompanied by numbness in her left arm and hand. On June 7, 2012 OWCP accepted appellant's claim for temporary aggravation of cervical radiculopathy with disc protrusion. Appellant received intermittent wage-loss compensation benefits on the supplemental rolls from June 2, 2012 through January 23, 2015.

In a November 5, 2014 report, Dr. Christopher R. Howe, appellant's treating Board-certified orthopedic surgeon, noted that appellant had an employment-related injury dating back to March 2012. He listed an impression of cervical spondylosis with possible radiculopathy and possible proximal muscle weakness from myasthenia gravis. Dr. Howe noted that appellant remained symptomatic. He related that he had placed her on a very low dose of Prednisone for one week and referred her for a repeat steroid injection as these treatments had been helpful.

On November 19, 2014 OWCP referred appellant to Dr. Louis Kretschmer, a Board-certified orthopedic surgeon, for a second opinion, to determine appellant's current medical status. In a December 10, 2014 report, Dr. Kretschmer reviewed appellant's medical history, and related findings from her magnetic resonance imaging (MRI) and computerized tomography (CT) scans. He listed appellant's diagnoses as: (1) administratively accepted temporary aggravation preexisting cervical spine degenerative disease, multiple levels; (2) myasthenia gravis; (3) diabetes; and (4) osteoarthritis of the knees, an unrelated condition. Dr. Kretschmer opined that none of the diagnosed conditions were medically connected to the March 14, 2012 employment injury, but that it appeared that aggravation of the degenerative disease of the cervical spine was administratively accepted. He explained that appellant's continuing conditions of global axial neck pain and marked weakness of both upper extremities were due to preexisting degenerative disease of the cervical spine and myasthenia gravis. Dr. Kretschmer noted they were not related to her employment injury of March 14, 2012, and thus the temporary aggravation would have ceased. He related that appellant's cervical condition was fixed and stable. Dr. Kretschmer also noted that appellant had axial pain, but no radicular component. Therefore, he was not aware of any injections or operative intervention that would meet appellant's expectations for relief of her axial neck pain. Dr. Kretschmer concluded that no work restrictions were necessary for appellant's accepted condition, and that no further treatment was recommended for the accepted employment condition, but that continued treatment for unrelated myasthenia gravis would be appropriate.

In a December 22, 2014 report, Dr. Howe listed his clinical impression as cervical spondylosis with primary axial neck pain. He noted that a new MRI scan of the cervical spine acquired on December 19, 2014 revealed facet arthropathy more on the right than the left at C4-C5, with moderate central stenosis at C5-C6 and mild-to-moderate bilateral foraminal narrowing. Dr. Howe noted that he was concerned that surgery may not provide the relief that she was

seeking. He concluded that, if appellant did not proceed with surgery, she was rapidly approaching maximum medical improvement (MMI).

On January 13, 2015 OWCP proposed terminating appellant's wage-loss compensation and medical benefits as the weight of the medical evidence established that appellant no longer had any residuals or continuing disability from work stemming from her accepted injury.

In a January 26, 2015 report, Dr. Howe noted that appellant had been having significant neck pain since March 2012. He noted that appellant's most recent MRI scan of December 19, 2014 was quite similar to the one obtained on February 15, 2012, prior to her work injury. Dr. Howe listed a clinical impression of cervical spondylosis with minimal radicular symptoms. He believed that appellant could return to work, but with restrictions. Dr. Howe noted that it would be difficult for appellant to perform overhead activities or repetitive lifting of greater than 15 pounds and noted that appellant's limitations may be due to her preexisting condition as well as her myasthenia gravis. He found that appellant was at MMI, and noted that he did not recommend surgery.

By letter dated February 9, 2015, appellant, through counsel, noted her objection to the proposed termination. Counsel initially contended that Dr. Kretschmer was an inappropriate physician as he was an orthopedist and that because cervical radiculopathy is a nerve condition and not a bone condition, appellant should have her claim reviewed by a neurologist or certified pain specialist. He then argued that the most recent MRI scan reviewed by Dr. Kretschmer showed continued annular bulges at C5-6 and C6-7, which was the same condition that was the basis for the approval of the claim in 2012. Counsel also contended that the second opinion physician provided no rationale to explain why the same condition that was the basis of the claim still existed, but was not work related. He noted that Dr. Kretschmer did not have the December 22, 2014 report which summarized the December 19, 2014 MRI scan of appellant, and explained that the December 19, 2014 MRI scan continued to reveal facet arthropathy worse on the right than the left at C4-5, and moderate central stenosis at C5-C6. Counsel also contended that OWCP asked a leading question when they asked Dr. Kretschmer whether the temporary aggravation of the cervical condition ceased. He questioned the weight given Dr. Kretschmer's report, arguing that this report lacked rationale and contained contradictions. Finally, counsel contended that the SOAF failed to list appellant's work limitations. He argued that, if OWCP determined that Dr. Kretschmer's report was rationalized, then the case should be referred for an impartial medical examination to resolve the conflict between Dr. Howe and Dr. Kretschmer with regard to whether appellant had continuing residuals due to the accepted condition.

By decision dated February 18, 2015, OWCP terminated appellant's medical and wage-loss compensation benefits effective February 20, 2015 as the weight of the medical evidence established that appellant no longer had any continuing disability or residuals related to the accepted employment-related condition.

On March 11, 2015 appellant requested an oral hearing before an OWCP hearing representative. At the hearing held on October 5, 2015 she testified and described the circumstances of her March 14, 2012 employment injury. Appellant noted that she worked part time following the injury, but that the last day she worked was October 17, 2014.

Counsel submitted a letter setting forth his previous arguments presented, both at the hearing and in his prior letter, including his arguments that the SOAF did not address appellant's physical limitations, that the second opinion physician did not review the subsequent medical evidence, that OWCP usurped the role of the medical adviser when it rejected Dr. Howe's reports, and that the second opinion was not rationalized.

By decision dated December 15, 2015, OWCP's hearing representative affirmed the February 18, 2015 decision. He found that appellant's treating physician, Dr. Howe, had reported on January 28, 2015 that appellant's December 19, 2014 MRI scan showed similar findings to the February 15, 2012 MRI scan, which was obtained prior to appellant's accepted employment injury. The hearing representative concluded that Dr. Kretschmer's medical opinion was well rationalized and established that appellant no longer had residuals of the accepted condition.

LEGAL PRECEDENT

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 the 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

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits as the report of the second opinion physician, Dr. Kretschmer, was sufficient to meet OWCP's burden of proof.

OWCP based its decision to terminate appellant's benefits on a December 10, 2014 report by Dr. Kretschmer, the second opinion physician, who conducted a physical examination and reviewed appellant's medical history. Dr. Kretschmer concluded that any temporary aggravation of appellant's cervical condition had ceased. He noted that appellant's cervical condition was fixed and stable, and that no further treatment was recommended for this condition.

The Board finds that Dr. Kretschmer's second opinion report does not conflict with the opinion of appellant's treating physician, Dr. Howe. Dr. Howe noted that appellant had been having significant neck pain since March 2012, and continued to note, in his January 26, 2015 report, a clinical impression of cervical spondylosis with minimal radicular symptoms. In his

³ *Barry Neutuch*, 54 ECAB 313 (2003); *Lawrence D. Price*, 47 ECAB 120 (1995); *see also M.B.*, Docket No. 12-728 (issued September 26, 2012).

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

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

January 26, 2015 report, however, he also explained that a comparison of appellant's February 15, 2012 MRI scan, which was taken prior to her employment injury, showed substantially similar findings to her most recent MRI scan of December 19, 2014. Dr. Howe also noted that appellant's physical limitations may be due to her preexisting condition, as well as her myasthenia gravis.

Dr. Kretschmer opined that the accepted temporary aggravation of appellant's cervical condition had ceased. He noted that her conditions of continuing global axial neck pain and marked weakness of both upper extremities were due to the preexisting degenerative disc disease of the cervical spine and myasthenia gravis. Dr. Kretschmer noted that they were not related to her employment injury of March 14, 2012, so the accepted condition temporary aggravation would have ceased. In assessing medical evidence, the weight of medical evidence is determined by its reliability, its probative value, and its convincing quality. The factors that comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of physical examination, the accuracy or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁶ As Dr. Kretschmer explained his review of the medical evidence and the findings of his physical examination, his opinion provides sufficient detail to constitute a rationalized medical opinion as to why the temporary aggravation of appellant's cervical radiculopathy with disc protrusion had resolved. Therefore, his opinion is sufficient to meet OWCP's burden of proof to terminate appellant's benefits.

On appeal counsel contends that the SOAF was deficient in that it did not contain appellant's physical limitations. His argument is without merit. The SOAF is a concise summary of the relevant facts that will allow a physician to resolve a particular medical issue.⁷ The essential elements of a SOAF include the date of injury, claimant's date of birth, job held on date of injury, name of the employing establishment, employment history, mechanism of injury, and condition claimed or accepted.⁸ However, not all information contained in a case files bears on the issues to be resolved in connection with the SOAF. Some information is irrelevant, while other material is inappropriate, prejudicial, or better discussed elsewhere. Evidence to be excluded from the SOAF includes medical opinions, unless used in detailing the medical history of a claim. The SOAF should also not be used to outline factual issues to be resolved, or to discuss legal issues.⁹ Accordingly, appellant's physical limitations, as set forth by the medical evidence, were properly excluded from the SOAF.

Counsel also challenges the weight given to the opinion of the second opinion physician, Dr. Kretschmer. He contends that OWCP asked a leading question when it asked Dr. Kretschmer to determine whether the temporary aggravation of the cervical condition had

⁶ *Nicolette R. Kelstrom*, 54 ECAB 570 (2003); *Anna M. Delaney*, 53 ECAB 384 (2002); *see also G.I.*, Docket No. 14-1857 (issued September 9, 2015).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.1 (September 2009).

⁸ *Id.* at Chapter 2.809.5.

⁹ *Id.* at Chapter 2.809.7.

ceased. This question does not suggest or imply an answer and, in fact, would provide greater support for appellant's position if Dr. Kretschmer determined that appellant continued to suffer from an aggravation of her preexisting condition.¹⁰

Counsel contended that Dr. Kretschmer was an orthopedist and not a certified pain specialist or a neurologist, and thus was an inappropriate physician to conduct the second opinion. The Board notes that the medical evidence submitted by appellant to support her claim was presented by Dr. Howe, who is also a Board-certified orthopedic surgeon, and that referral to Dr. Kretschmer was appropriate.

Counsel contended that Dr. Kretschmer did not review medical evidence submitted after his report, including the January 26, 2015 report by Dr. Howe which reviewed a December 19, 2014 MRI scan. He also contends that the December 19, 2014 MRI scan showed the same condition for which the claim was accepted. Counsel's arguments are without merit. Appellant's claim was accepted for a temporary aggravation of the preexisting cervical radiculopathy and disc protrusion. Dr. Howe reviewed the December 19, 2014 MRI scan in his January 26, 2015 report. However, he noted that this MRI scan was quite similar to the findings seen on the preinjury MRI scan of February 15, 2012. Therefore, the evidence indicates that the MRI scan showed the preexisting condition and not any temporary aggravation.

Counsel also contends that OWCP usurped the role of the medical adviser when it rejected Dr. Howe's reports. However, OWCP has a duty to evaluate the medical evidence to determine whether appellant continued to experience disability or residuals from her employment-related condition, so this argument is also without merit.¹¹

The evidence of record substantiates that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's medical benefits and wage-loss compensation for her accepted injury effective February 20, 2015.

¹⁰ See *T.B.*, Docket No. 15-0001 (issued July 1, 2015).

¹¹ See *J.R.*, Docket No. 13-2028 (issued September 24, 2014).

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 29, 2016
Washington, DC

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

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

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