

**United States Department of Labor
Employees' Compensation Appeals Board**

S.Y., Appellant

and

**SOCIAL SECURITY ADMINISTRATION,
Baltimore, MD, Employer**

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**Docket No. 16-0155
Issued: May 3, 2016**

Appearances:
Appellant, pro se
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 October 29, 2015 appellant filed a timely appeal from a May 4, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.³

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from May 4, 2015 the date of OWCP's decision was Saturday, October 31, 2015. Since using November 3, 2015, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is October 29, 2015 rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the May 4, 2015 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003). Thus, the Board is precluded from reviewing this evidence.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective April 16, 2015; and (2) whether appellant met her burden of proof to establish any continuing residuals on or after April 16, 2015 due to her accepted January 9, 2014 employment injury.

On appeal appellant contends that she continues to have residuals from her employment injuries.

FACTUAL HISTORY

On January 9, 2014 appellant, then a 33-year-old contact representative, filed a traumatic injury claim (Form CA-1) alleging that on that day she sustained bilateral knee and foot injuries as the result of falling over a pallet of boxes. OWCP accepted the claim for right shoulder contusion, neck sprain, and right knee and leg sprains. On June 10, 2014 appellant returned to work four hours per day for two days per week, but stopped work on July 10, 2014. OWCP paid her compensation on the supplemental rolls.⁴

In a November 19, 2014 report, Dr. Janet O'Mahony, a treating Board-certified internist, provided a medical history, noting previous diagnoses of acute sinusitis, asthma, edema, pityriasis versicolor, acne, acute sinusitis, as well as hand and wrist tenosynovitis. She noted that appellant complained of neck and hand numbness and tingling and upper extremity pain since her fall at work. Physical examination findings included no edema, normal pulses, no nodes or bruits in the neck, tenderness over the shoulders and trapezius areas, and hypermobility particularly in the elbows and knees. Under assessment, Dr. O'Mahony noted depression, hypermobility syndrome, bilateral arm paresthesia, neck and shoulder pain following work fall, allergies, and blindness. No opinion was provided regarding appellant's disability status.

On December 11, 2014 OWCP referred appellant to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion evaluation, to determine appellant's work capability and whether she continued to have residuals due to her accepted conditions.

In a December 18, 2014 disability note, Dr. O'Mahony opined that appellant was disabled from working due to neck and arm pain caused by a work injury.

In a January 9, 2015 report, Dr. Hanley diagnosed mild cervical sprain/strain, history of right knee contusion, and lumbosacral strain/sprain, which were all resolved. A physical examination revealed full right knee range of motion, no crepitus or effusion in the knee, and full bilateral shoulders range of motion. An examination of her cervical spine showed that appellant was able to bring her chin to both shoulders and chest, and that she was able to bring her ear to both shoulders. Dr. Hanley found no evidence of any neurologic compromises as a result of her cervical condition. He reported that appellant's subjective complaints of discomfort were unsupported by any objective evidence. Dr. Hanley also found no evidence that the January 9,

⁴ The record reveals that in January 2015 appellant began to receive disability benefits from social security for her blindness.

2014 employment injury aggravated an underlying condition. Thus, he concluded that appellant could perform her regular duties with no restrictions and no further medical treatment was required for the accepted employment injuries.

Following receipt of Dr. Hanley's report, OWCP received reports covering the period October 2, 2014 to January 22, 2015 from Dr. O'Mahony repetitive of findings and opinions from her November 19, 2014 report.

On March 10, 2015 OWCP issued a notice proposing to terminate her compensation benefits. It found the weight of the medical opinion evidence rested with Dr. Hanley's opinion. OWCP found Dr. O'Mahony had not differentiated between the accepted employment and what appears to be a multitude of nonemployment conditions in finding appellant totally disabled. Thus, it found Dr. Mahoney's opinion insufficient to create a conflict with Dr. Hanley's opinion.

In a March 24, 2015 report, Dr. O'Mahony noted that appellant had been accepted for social security disability benefits and Office of Personnel Management retirement. He reported that appellant had neck, shoulder, and knee pain which could be from her hypermobility condition. Examination findings, diagnoses and assessment were unchanged from prior reports.

The record contains physical therapy reports covering the period March 17 to April 1, 2015 from a physical therapist.

By decision dated April 16, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that day. It found the weight of the medical opinion evidence rested with the opinion of OWCP's referral physician, Dr. Hanley.

On April 27, 2015 appellant requested reconsideration. In support of her request appellant submitted physical therapy reports dated April 14 and 20, 2015.

By decision dated May 4, 2015, OWCP denied modification of its April 16, 2015 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁵ After it has determined that an employee has disability causally related to 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.⁶ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

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

⁶ *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁷ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁸ 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.⁹

ANALYSIS -- ISSUE 1

OWCP accepted the claim for right shoulder contusion, neck sprain, and right knee and leg sprains. It terminated appellant's compensation benefits effective April 16, 2015 based upon Dr. Haney's opinion that she no longer had any residuals or disability due to her accepted employment conditions. The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits effective April 16, 2015.

In a January 9, 2015 report, Dr. Hanley diagnosed mild cervical sprain/strain, history of right knee contusion, and lumbosacral strain/sprain, which were all resolved. He reported no evidence of any neurologic compromises as a result of her cervical condition, full bilateral shoulder and right knee range of motion, and no effusion or crepitus in the knee. Dr. Hanley reported that appellant's complaints of trapezial muscle discomfort were subjective and unsupported by the objective evidence. He found no evidence of any aggravation of an underlying condition as a result of the January 9, 2014 employment injury aggravated an underlying condition. Based on his review of the medical evidence, statement of accepted facts, and physical examination, Dr. Hanley concluded that appellant could perform her regular duties with no restrictions and no further medical treatment was required for the accepted employment injuries.

The record contains reports covering the period October 2, 2014 to January 22, 2015 from Dr. O'Mahony diagnosing acute sinusitis, asthma, edema, pityriasis versicolor, acne, acute sinusitis, and hand and wrist tenosynovitis. However, none of Dr. O'Mahony's reports specifically address whether appellant's disability was due to her accepted employment injuries or a multitude of nonaccepted medical conditions. There is no medical reasoning explaining how any continuing condition or disability was causally related to the January 9, 2014 employment injury and accepted right shoulder contusion, neck sprain, and right knee and leg sprains. Thus, Dr. O'Mahony's reports are insufficient to create a conflict with Dr. Hanley's opinion.

Appellant submitted physical therapy reports covering the period March 17 to April 1, 2015. These reports, however, do not constitute medical evidence under section 8101(2) of FECA.¹⁰ Healthcare providers such as nurses, acupuncturists, physician assistants, and physical therapists are not considered physicians under FECA, and their reports and opinions

⁸ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁹ *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

¹⁰ Section 8101(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.

do not constitute competent medical evidence to establish a medical condition, disability, or causal relationship.¹¹

The Board finds that the opinion of Dr. Hanley represents the weight of the evidence and establishes that appellant's work-related conditions have resolved. Dr. Hanley indicated that appellant did not have residuals from the conditions of right shoulder contusion, neck sprain, and right knee and leg sprains and had no restrictions due to the work injury. There is no contemporaneous medical evidence of equal weight supporting appellant's claim for continuing disability and medical residuals. The Board affirms OWCP's denial of modification of the termination decision.

On appeal appellant requests that her medical benefits be reinstated for continued treatment as she continues to have pain in her right knee, hip, and neck. She also alleged that Dr. Hanley did not examine her, but only asked her questions. The Board finds the weight of the medical opinion evidence rested with Dr. Hanley who concluded that appellant's employment-related conditions had resolved. The Board finds that Dr. O'Mahony's opinion was insufficient to create a conflict in the medical opinion evidence as she failed to explain how appellant had any continuing disability or residuals from the accepted conditions.

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's compensation benefits effective April 16, 2015, the burden shifted to appellant to establish that she had continuing disability causally related to her accepted injury.¹²

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any continuing disability due to residuals of her shoulder contusion, neck sprain, and right knee and leg sprains on or after April 16, 2015.

After the termination of benefits on April 16, 2015, appellant submitted physical therapy reports dated April 14 and 20, 2015. As noted above, the Board has held that treatment notes signed by a physical therapist are not considered medical evidence as these providers are not considered a physician under FECA.¹³

Consequently, as appellant has failed to submit any probative medical evidence to establish an employment-related condition or disability after April 16, 2015, she failed to meet her burden of proof.

¹¹ 5 U.S.C. § 8101(2); *see also G.G.*, *supra* note 3; *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

¹² *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

¹³ *Supra* note 11.

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 denied modification of the termination of appellant's wage-loss compensation and medical benefits effective April 16, 2015. The Board further finds that appellant has not met her burden of proof to establish any continuing residuals on and after April 16, 2015 due to her accepted January 9, 2014 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 4, 2015 is affirmed.

Issued: May 3, 2016
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