

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective February 29, 2016.

On appeal counsel contends that the weight of the medical opinion evidence clearly establishes that appellant continues to have residuals and disability due his accepted work injury.

FACTUAL HISTORY

On August 5, 2014 appellant, then a 45-year-old seasonal deck hand,³ filed a traumatic injury claim (Form CA-1) alleging that on August 1, 2014 he sustained cervical and lumbar strains when his boat capsized as he was assisting with tying off buoys on the Mississippi River. He explained that he was carried off by the river's current while he was under the barge, and his body was struck by the barge while he struggled to free himself. Appellant stopped work on August 1, 2014. OWCP accepted the claim for lumbar and neck strains and paid appellant wage-loss compensation on the supplemental rolls for disability for the period September 29, 2014 to July 25, 2015.

Following the injury, appellant was under the care of Dr. Dan W. Jackson, a treating osteopathic physician, Board-certified in family medicine, and Dr. Michael L. Baker, a treating osteopathic physician specializing in general practice. Diagnoses reportedly due to the August 1, 2014 employment injury included cervical strain, cervicgia, bilateral shoulder sprains, multiple contusions including lumbosacral, and multiple psychological problems. Pain and significant limb problems and neck and cervical radicular, low back, bilateral shoulder, and hip pain were also reported in treatment notes during the period August 11, 2014 to January 6, 2015. In a September 23, 2014 treatment note, Dr. Jackson reviewed a magnetic resonance imaging scan finding it was basically unremarkable. On January 6, 2015 he reported that appellant's pain was subjective, but that appellant had decreased range of motion, and pain on passive range of motion.

On April 23, 2015 appellant came under the care of Dr. Michael Winkelmann, a Board-certified physiatrist. Dr. Winkelmann provided a history of appellant's August 1, 2014 work injury, his medical history, and examination findings. The physical examination findings included a left knee knot, decreased lumbar flexibility, and pain. Dr. Winkelmann recommended a left knee MRI scan as he believed there might be meniscal pathology due to the August 1, 2014 work injury. He reported that appellant's pain might be the result of "analgesic-induced allodynia." In an attached work capacity evaluation form (Form OWCP-5c), he concluded that appellant was disabled from work until a left knee MRI scan and physical therapy were performed.

In May 15, 2015 treatment notes, Dr. Winkelmann reported left knee pain and clicking, which he concluded might be a meniscal tear. He reported that appellant's cervical and shoulder evaluation was unremarkable.

³ Appellant was employed as a four-month seasonal employee whose last day of work would have been December 17, 2014.

Dr. Winkelmann, in a June 10, 2015 report, noted that appellant continued to have shoulder, cervical, lower back, knee and hip pain. He noted that at the time of the August 1, 2014 work injury appellant reported cervical and shoulder pain. Based on his examination findings, Dr. Winkelmann reported right lower extremity, hip, and knee pain with right knee meniscal clicking. He explained that he asked appellant about the right knee click and appellant replied that he felt discomfort when his knee was struck by the barge, but his cervical and shoulder pain was his primary concern. According to Dr. Winkelmann, appellant's cervical and lumbar sprains had improved, but his hip and knee discomfort required further evaluation. In attached OWCP-5c forms dated June 1, July 1 and 8, 2015, Dr. Winkelmann diagnosed neck and lumbar strains and that appellant was currently disabled from work.

In a July 8, 2015 report, Dr. Winkelmann noted that he had been asked by OWCP to review the etiology of appellant's left knee condition. He opined that based on the history appellant provided of hitting his left knee against the barge and his inability to walk once he was assisted onto the boat's deck, that appellant sustained a knee injury. At the time appellant's focus was on his cervical and lumbar pain because his knee discomfort was not as significant. Dr. Winkelmann noted that it was not unusual that, when pain was experienced in multiple areas, one area may not be as apparent. Physical examination findings clearly showed a left knee medial aspect knot. Dr. Winkelmann found that the left knee injury contributed to appellant's lumbar issues and inability to walk without a limp. Thus, he opined that appellant's lumbar condition has been prolonged and exacerbated by the left knee injury and that the cervical condition had improved. Dr. Winkelmann concluded that the evidence was clear that the August 1, 2014 employment injury also caused a left knee injury. He opined that appellant was capable of performing light-duty work with lifting restrictions of no more than 10 to 15 pounds.

On July 22, 2015 OWCP referred appellant for a second opinion evaluation with Dr. Daniel P. Dare, a Board-certified orthopedic surgeon, to determine whether appellant continued to have residuals and disability due to his accepted August 1, 2014 work injury.

In an August 24, 2015 report, Dr. Dare, based upon a review of the medical evidence, statement of accepted facts (SOAF), and appellant's physical examination, diagnosed cervical and lumbar sprains, and noted right knee pain. Appellant related that his back, neck, and knee, pain had all improved considerably. Dr. Dare found appellant's complaints to be nonspecific and vague. He reported that appellant had been released to return to light-duty work on June 6, 2015, but that he had not returned to work. Appellant's cervical, chest and lumbar x-rays were interpreted as normal. Dr. Dare noted that appellant did not claim of any significant disability. A physical examination revealed no cervical or lumbar tenderness, normal cervical and lumbar range of motion, normal upper extremity neurologic examination, some extremity pain complaints, no bilateral knee effusion or tenderness, no knee instability, and a mild right knee click. Dr. Dare opined that the accepted lumbar and cervical sprains had resolved without residuals.

In a September 16, 2015 progress notes, Dr. Winkelmann reported that appellant had cervical, shoulder, upper trapezius and knee pain. He reiterated his opinion that appellant's knee pain was caused by the August 1, 2014 work injury.

On September 26, 2015 the employing establishment offered appellant a light-duty sedentary job in a watchman's shack located on mooring barge. Appellant, however, declined the position due to his anxiety with being on boats/barges.

On January 4, 2016 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits.

In response to OWCP's proposal appellant submitted reports dated December 9, 2015 and January 13, 2016 by Dr. Winkelmann. In his December 9, 2015 report, Dr. Winkelmann reported that appellant was doing well except for significant left knee pain and difficulties with the knee locking up. Dr. Winkelmann recommended an MRI scan. In a January 13, 2016 report, he provided examination findings.

By decision dated March 2, 2016, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits effective February 29, 2016. It found the opinion of Dr. Dare, an OWCP referral physician, that appellant no longer had any residuals or disability due to the accepted August 1, 2014 injury constituted the weight of the medical opinion evidence.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁴ After it has determined that an employee has disability causally related to his federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ 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.⁸

ANALYSIS

OWCP accepted appellant's claim for lumbar and neck strains. It terminated appellant's wage-loss compensation and medical benefits effective February 29, 2016 based upon Dr. Dare's opinion that he no longer had any residuals or disability due to his accepted employment

⁴ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁶ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁷ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

conditions. The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective February 29, 2016.

In an August 24, 2015 report, Dr. Dare noted diagnoses of cervical and lumbar sprains, but found no cervical or lumbar tenderness, normal cervical and lumbar range of motion, normal upper extremity neurologic examination, no bilateral knee effusion or tenderness, and no knee instability. He reported that appellant had no objective symptoms of the cervical or lumbar sprains. Based on his review of the medical evidence, SOAF, and physical examination, Dr. Dare concluded that appellant could perform his regular duties with no restrictions and no further medical treatment was required for the accepted employment injuries.

The Board finds that Dr. Dare's report represents the weight of the medical evidence and that OWCP properly relied on his report to terminate appellant's wage-loss compensation and medical benefits for the accepted conditions on February 29, 2016. Dr. Dare's opinion is based on a proper factual and medical history as he reviewed the SOAF and appellant's prior medical treatment. He also related his comprehensive examination findings in support of his opinion that appellant no longer had any residuals or disability causally related to his accepted lumbar and neck strains. OWCP therefore met its burden of proof to terminate appellant's wage-loss compensation and medical benefits based upon the report from Dr. Dare.⁹

The record also contains reports from Dr. Winkelmann covering the period April 23, 2015 to January 13, 2016. On April 23, 2015 Dr. Winkelmann reported that appellant struck his left knee under the barge and he diagnosed a possible meniscal condition. He also opined that appellant's pain could be attributed to analgesic-induced allodynia. In subsequent reports, Dr. Winkelmann reported appellant's complaints of pain involving his bilateral shoulders, cervical and lumbar aching pain. He later indicated that appellant's cervical and lumbar sprains showed improvement. Dr. Winkelmann opined that the evidence was clear that appellant also sustained a left knee injury as a result of the August 1, 2014 work injury. The Board notes that OWCP has not accepted a left knee injury as employment related. For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical opinion evidence sufficient to establish causal relationship and is not OWCP's burden to disprove such a relationship.¹⁰ At the time of the August 1, 2014 work injury appellant did not allege a left knee injury or state that his knee had been struck by the barge. The Board further notes that Dr. Winkelmann was not consistent in his reports in relating a left knee injury. In his June 10, 2015 report, Dr. Winkelmann noted right knee clicking and asked appellant about his right knee. At that time appellant related that he had struck his right knee on the barge at the time of the August 1, 2014 work injury. Similarly Dr. Dare noted appellant's complaints regarding his right knee, not left knee.

The Board finds that Dr. Winkelmann failed to provide sufficient medical rationale, based upon a consistent history of injury, explaining the causal relationship between the

⁹ See *F.B.*, Docket No. 13-2066 (issued March 11, 2014).

¹⁰ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

diagnosed left knee condition and the accepted August 1, 2014 employment injury, and thus, his reports are insufficient to establish causal relationship.¹¹

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits as appellant no longer had residuals of the accepted cervical and lumbar conditions.

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 appellant's wage-loss compensation and medical benefits, effective February 29, 2016.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 2, 2016 is affirmed.

Issued: November 3, 2016
Washington, DC

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

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

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

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