

established continuing residuals or associated disability of the accepted conditions after July 2, 2014.

FACTUAL HISTORY

OWCP accepted that on or before September 12, 2008 appellant, then a 46-year-old letter carrier, sustained a low back sprain, right knee and leg sprains, and right Achilles tendinitis due to prolonged walking in the performance of duty. Appellant stopped work on September 13, 2008. He received wage-loss compensation on the supplemental rolls from November 22, 2008 to April 11, 2009.

In a September 15, 2008 report, Dr. Ghansham Singh, an attending Board-certified internist, noted paraspinal tenderness at L4-5 on the left and a mild limp. He held appellant off work for two weeks. Dr. Singh prescribed physical therapy. In an October 1 and November 10, 2008 reports, Dr. Rajpaul Singh, an attending Board-certified neurologist, diagnosed lumbosacral sprain and strain, right knee and leg sprain and strains, and right Achilles tendinitis. He continued to hold appellant off work as of October 22, 2008.

In November 11 and December 10, 2008 reports, Dr. Rajesh Patel, an attending physician Board-certified in pain management, diagnosed discogenic and sacroiliac lumbar pain with right-sided radiculopathy. OWCP authorized a series of sacroiliac injections. Appellant had the sudden onset of adult diabetes mellitus in reaction to the steroid injection, with an emergency hospital admission on February 14, 2009. After his blood glucose was under control with medication, Dr. Patel continued epidural injections in May 2009. Appellant remained off work.

In a May 19, 2009 report, Dr. Sanjay Bakshi, an attending physician Board-certified in pain management, diagnosed lumbar facet syndrome, lumbar radiculopathy, and possible discogenic disease. He recommended lumbar facet blocks. OWCP authorized the injections.

On July 19, 2009 OWCP obtained a second opinion from Dr. David Rubinfeld, a Board-certified orthopedic surgeon. Dr. Rubinfeld reviewed the medical record and a statement of accepted facts, and provided results on examination. He provided detailed range of motion measurements for all planes of motion in the upper and lower extremities and the cervical and lumbar spine. Dr. Rubinfeld found no limitation of motion in any joint, but noted voluntarily restricted motion in the lumbar spine. He opined that appellant had no objective findings in the lumbar spine, and exhibited pain behaviors. Dr. Rubinfeld released appellant to full duty with no restrictions.

In late 2009, appellant relocated from New York to New Jersey. Beginning on January 28, 2010, he was followed by Dr. Dean L. Carlson, an attending Board-certified orthopedic surgeon. Dr. Carlson provided a history of injury and treatment, and diagnosed right lumbosacral radiculopathy and a low back strain. He held appellant off work.

On September 16, 2010 OWCP obtained a second opinion from Dr. Sean Lager, a Board-certified orthopedic surgeon. Dr. Lager opined that appellant had a "significant problem," with a large disc herniation causing weakness, paresthesias, and sensory deficits in the right lower extremity. He recommended electromyogram (EMG) testing and a neurosurgical consultation.

Dr. Lager found that appellant remained disabled for all work, and had not yet attained maximum medical improvement.

In a November 11, 2010 report, Dr. Carlson observed that on examination, appellant had “an exhibition of near total inability to walk,” leaning heavily on walls or furniture. Appellant could not stand on his heels or toes, had great difficulty climbing on and off the examination table, and needed assistance lifting his right leg onto the table. Dr. Carlson observed a half inch difference between right and left calf measurements, smaller on the right. He diagnosed low back and lower extremity pain of undetermined etiology.

A December 14, 2010 lumbar magnetic resonance imaging (MRI) scan showed mild facet arthropathy from L3 through S1. Dr. Carlson opined on December 22, 2010 that these findings were insufficient to explain the severity of appellant’s clinical presentation, as there was “no disc herniation, spinal canal, or foraminal stenosis.”

In a January 5, 2011 chart note, Dr. Carlson opined that there was no orthopedic cause for appellant’s inability to “walk and function.” He recommended a “neurologic check to make sure there [was] no MS [multiple sclerosis] or central nerve system etiology.” Dr. Carlson prescribed a cane. Appellant remained off work.

In a June 21, 2011 report, Dr. Stephen Sachs, an attending Board-certified neurologist, diagnosed bilateral lumbar radiculopathy, with mild bilateral cubital tunnel syndrome, borderline left carpal tunnel syndrome, possible myositis versus connective tissue disorder or metabolic factors. He recommended EMG studies. Appellant remained off work through 2013.

Dr. Carlson noted on June 13, 2013 that appellant had not been able to get authorization for EMG and nerve conduction velocity (NCV) testing. He recommended the testing as appellant still had an unusual gait and difficulty moving his lower extremities.

September 5, 2013 EMG and NCV studies showed “no electrodiagnostic abnormalities to implicate compression neuropathy or lumbosacral radiculopathy” in the lower extremities. Dr. Martin Diamond, a Board-certified physiatrist and the electromyographer, noted that appellant had a “significant degree of lumbosacral myofascial pain which may be contributing to his symptoms.”

Dr. Carlson reviewed the electrodiagnostic report on October 23, 2013. He diagnosed “[l]umbosacral myofascial pain with functional overlay.” Dr. Carlson explained that there was no “medical evidence identified for [appellant’s] inability to flex his right hip. Possibility of a secondary gain remains.” In a November 18, 2013 report, Dr. Carlson found that the accepted injuries had ceased without residuals. He diagnosed “nonorganic low back pain.” Dr. Carlson released appellant to full duty without restrictions. Appellant remained off work.

By notice dated May 29, 2014, OWCP advised appellant of its proposal to terminate his wage-loss and medical benefits, as Dr. Carlson opined that the accepted conditions had ceased without residuals. It afforded appellant 30 days to submit additional evidence or argument. Appellant did not respond to the notice.

By decision dated July 2, 2014, OWCP finalized the May 29, 2014 notice and terminated appellant's wage-loss and medical benefits effective July 2, 2014.

On July 31, 2014 appellant provided a June 17, 2014 report from Dr. Sachs, noting a positive right straight leg raising test, a markedly antalgic gait, and a normal neurologic examination. Dr. Sachs diagnosed a lumbosacral sprain and thoracic/lumbosacral radiculopathy. He recommended additional testing.

In a May 5, 2015 letter, counsel requested reconsideration. He submitted new medical evidence. Dr. David E. Rojer, an attending Board-certified orthopedic surgeon, diagnosed thigh and pelvic pain of unknown etiology on August 19, 2014. He held appellant off work. A September 4, 2014 lumbar MRI scan showed a right-sided disc protrusion at L4-5 with mild right foraminal narrowing. On September 10, 2014 Dr. Rojer diagnosed as a right-sided herniated L4-5 disc, and a labral tear of the right hip.

Dr. Nathaniel Sutain, an attending Board-certified orthopedic surgeon, began treating appellant on August 27, 2014. He diagnosed a herniated L4-5 disc. Dr. Sutain noted appellant's continued pain complaints in reports through December 16, 2014. On January 19, 2015 Dr. Sutain reviewed appellant's history. He related appellant's complaints of right-sided lumbar radiculopathy. Dr. Sutain opined that the herniated L4-5 disc demonstrated by September 4, 2014 MRI scan was causally related to the accepted lumbar condition, and competent to produce appellant's symptoms. He found appellant totally disabled for work.

Dr. Christopher R. Ropiak, a Board-certified orthopedic surgeon in practice with Dr. Sutain, diagnosed right hip pain on December 15, 2014 and held appellant off work. Appellant underwent a February 24, 2015 arthrogram of the right hip.

By decision dated November 9, 2015, OWCP denied modification of the July 2, 2014 decision, finding that the additional medical evidence did not contain sufficient rationale to establish that the accepted conditions disabled appellant for work on and after July 2, 2014.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

³ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁴ *Id.*

⁵ *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.⁶ 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.⁷

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a low back sprain, right knee and leg sprains, and right Achilles tendinitis on or before September 12, 2008. Appellant stopped work on September 13, 2008 and did not return.

After his move to New Jersey appellant was followed by Dr. Carlson, an attending Board-certified orthopedic surgeon. On January 28, 2010 Dr. Carlson diagnosed lumbosacral radiculopathy and a low back strain.

Dr. Carlson opined on November 18, 2013 that the accepted conditions had resolved completely and released appellant to full duty. OWCP then terminated appellant's wage-loss and medical compensation benefits effective July 2, 2014 finding Dr. Carlson the weight of the medical evidence.

The Board finds that Dr. Carlson based his opinion on his knowledge, extensive imaging and electrodiagnostic testing, and detailed clinical examinations and found no objective explanation for appellant's symptoms. The Board, therefore, finds that OWCP's July 2, 2014 decision terminating appellant's wage-loss compensation and medical benefits was proper under the law and facts of the case as the weight of the medical evidence determined that the accepted conditions had ceased without residuals.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of benefits clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits, shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits.⁸

ANALYSIS -- ISSUE 2

As stated above, OWCP properly terminated appellant's wage-loss and compensation benefits effective July 2, 2014, based on the opinion of Dr. Carlson. The burden then shifted to

⁶ See *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

⁸ See *Virginia Davis-Banks*, 44 ECAB 389 (1993); see also *Howard Y. Miyashiro*, 43 ECAB 1101 (1992).

appellant to demonstrate that the accepted injuries caused continuing residuals or disability for work and after July 2, 2014.⁹

Following the July 2, 2014 decision terminating appellant's wage-loss compensation and medical benefits, appellant submitted additional medical evidence. He was followed by three associated Board-certified orthopedic surgeons, Drs. Rojer, Ropiak, and Sutain beginning on August 19, 2014. The physicians held appellant off work, and obtained a September 4, 2014 lumbar MRI scan showing a right-sided L4-5 disc protrusion with mild right foraminal narrowing.

Dr. Rojer diagnosed a labral tear of the right hip, and Dr. Ropiak diagnosed right hip pain. However, OWCP had not accepted an occupational right hip condition. Dr. Sutain opined on January 19, 2015 that the herniated L4-5 disc was causally related to the accepted injuries, and competent to cause appellant's symptoms. However, the physicians did not provide their medical reasoning as to why the lumbar disc herniation or labral tear were related to the accepted low back sprain or right leg conditions. In the absence of such rationale, the opinions of Drs. Rojer, Ropiak, and Sutain are of diminished probative value and is insufficient to meet appellant's burden of proof.¹⁰

OWCP properly found that Dr. Carlson's opinion continued to represent the weight of the medical evidence. Dr. Carlson explained that based on a thorough examination and complete history, the accepted lumbar and right lower extremity conditions had ceased. The evidence appellant submitted following the termination is insufficient to outweigh Dr. Carlson's opinion as it attributes appellant's symptoms to an L4-5 disc herniation and labral tear in the right hip, conditions not accepted by OWCP.¹¹ The Board therefore finds that OWCP's November 9, 2015 decision finding that appellant did not establish continuing residuals of the accepted injuries on and after July 2, 2014 is appropriate under the law and facts of the case.

On appeal, counsel asserts that Dr. Rubinfeld's report cannot carry the weight of the medical evidence as it was created five years before the July 2, 2014 termination of benefits. The Board notes that OWCP did not rely on Dr. Rubinfeld's report in terminating appellant's compensation benefits, but on the reports of appellant's attending physicians, particularly Dr. Carlson. Counsel also contends there is a conflict between Dr. Rubinfeld, for the government, and Dr. Sutain, for appellant, regarding whether appellant's L4-5 radiculopathy was causally related to the accepted lumbar sprain. As stated above, OWCP did not rely on Dr. Rubinfeld's report in terminating appellant's compensation.

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.

⁹ *Id.*

¹⁰ *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹¹ *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by OWCP is due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury).

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective July 2, 2014. The Board further finds that appellant has not established continuing residuals or associated disability of the accepted conditions after July 2, 2014.

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 7, 2016
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