United States Department of Labor
Employees' Compensation Appeals Board

R.F., Appellant	)	
	)	
and	)	**Docket No. 16-0845**
	)	**Issued: July 25, 2017**
U.S. POSTAL SERVICE, MEDIA CARRIER ANNEX, Philadelphia, PA, Employer	)	
	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 21, 2016 appellant, through counsel, filed a timely appeal from a November 13, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 8, 2015; and (2) whether appellant met her burden of proof to establish continuing disability after February 8, 2015.

FACTUAL HISTORY

On April 29, 2009 appellant, then a 53-year-old full-time window/distribution clerk, filed a claim for a traumatic injury (Form CA-1) alleging that on April 28, 2009 she tripped on uneven pavement and fell, spraining both wrists. She stopped work on April 29, 2009. OWCP accepted appellant's claim for sprain of both wrists, sprain of left knee, contusion of right knee, tenosynovitis right hand, villonodual ulnar synovitis of the left ankle and foot, and left ankle sprain. Appellant received intermittent wage-loss compensation benefits on the supplemental rolls as of June 13, 2009. She underwent an authorized right wrist arthroscopy on December 3, 2009. Appellant returned to work for four hours a day on June 1, 2010, but stopped work again on April 10, 2012 when she underwent an authorized left ankle arthroscopy, debridement of synovitis lateral compartment and debridement of anterior talofibular ligament.

In a July 26, 2012 progress report, Dr. A. Lee Osterman, a physician Board-certified in orthopedic surgery and surgery of the hand, noted that appellant was almost three years status post debridement of an irreparable scapholunate tear of her right wrist, and that she had undergone left ankle surgery on April 10, 2012. He noted that, at this point, appellant did have defined diagnoses of chronic mechanical problems in her wrists, right more than left, with defined scapholunate and lunatotriquetral injury on her right. Dr. Osterman noted elements of tenosynovitis and low-grade carpal tunnel syndrome. He opined that appellant was stable and, from an upper extremity point of view, he would allow her to return to work limited duty. However, Dr. Osterman noted that she was still off work because she could not stand for protracted periods of time because of her recent ankle surgery.

By report dated December 6, 2012, Dr. Osterman noted that appellant's diagnoses relative to her upper extremities remained unchanged. He noted that she had an irreparable mechanical change in her wrist, and ongoing elements of median neuropathy. Dr. Osterman opined that appellant was at maximum medical improvement (MMI) with regard to her wrist. He reiterated that, from an upper extremity point only, she could perform sedentary light duty. Dr. Osterman recommended further electrical studies.

In a February 6, 2013 report, Dr. Leroy Fleischer, a Board-certified internist, noted that, despite surgery on her left ankle, appellant still complained of pain and swelling on an almost daily basis. He noted that a recent magnetic resonance imaging (MRI) scan showed that bones and ligaments appeared to be reasonably intact for her postoperative condition. Dr. Fleischer indicated that appellant was having ongoing pain despite minimal signs on examination and a reasonably normal MRI scan. He noted that it had been almost 10 months since her surgery, so this raised the possibility that her symptoms are actually due to reflex sympathetic dystrophy (RSD).

On April 1, 2013 Dr. Osterman diagnosed: (1) status post right wrist arthroscopy with bilateral scapholunate pathology, (2) normal electromyogram (EMG) and nerve conduction velocity (NCV) studies, and (3) bilateral carpometacarpal osteoarthritis. He noted that, although the EMG/NCV testing did not reveal any underlying nerve damage, it was known that people with scapholunate problems could have some intermittent numbness and tingling due to nerve irritation.

In an April 17, 2013 medical report, Dr. Paul Horenstein, a Board-certified orthopedic surgeon, reported that appellant presented with left ankle pain. He noted that she was one year postsurgery and was still having trouble with pain and swelling. Orthopedically, Dr. Horenstein found that appellant was stable without anatomic evidence regarding the cause of her pain. He suspected nerve pain of unclear etiology similar to her upper extremity.

On May 3, 2013 OWCP referred appellant to Dr. Robert Allen Smith, a Board-certified orthopedic surgeon, for a second opinion regarding the status of her accepted work-related conditions and her ability to return to work. In a May 30, 2013 report, Dr. Smith discussed appellant's April 28, 2009 work injury and medical history and opined that, with regard to the accepted conditions, the sprains and contusion of the wrists and knees had resolved without residuals. He also noted that the tenosynovitis of the right hand had resolved since Dr. Osterman dealt with the condition surgically in 2009. With regard to the left ankle, Dr. Smith found that the synovitis was dealt with in the surgical procedure performed by Dr. Horenstein, and that the ankle sprain had resolved without residuals. He further opined that, at the present time, appellant had an elevated level of symptomatology and there appeared to be a large functional component to her symptoms given the lack of objective organic findings from the clinical examination. Dr. Smith concluded that appellant had reached MMI with regard to all of the accepted conditions from her employment incident and could return to regular-duty work without restrictions. He also opined that there did not appear to be any additional requirement for treatment, testing, or activity modification.

Appellant subsequently submitted a June 19, 2013 report wherein Dr. Horenstein noted that appellant continued to experience sensitivity to light touch on the dorsal aspect of her left foot, although she presented with no anatomical abnormalities. He referred her to pain management for further treatment. In a note of the same date, Dr. Horenstein stated that appellant would be held from all work until further pain management evaluation.

Appellant also submitted an April 23, 2013 report from Dr. Sheldon Lebovitz, an osteopath, in which he interpreted an NCV study as showing significant electrophysiological evidence of a moderate isolated peripheral nerve compromise of the left peroneal nerve at or about the knee. Dr. Lebovitz noted that the injury affected the myelin and possibly axonal components of the motor and sensory peripheral nerves. He noted no current electrophysiological evidence reflecting a polyneuropathic or nerve root injury.

Dr. Osterman noted in a March 6, 2014 report that he discussed treatment options with appellant for her carpometacarpal osteoarthritis. He noted that, with regard to appellant's right wrist, she was at MMI but had irreparable tears objectively identified in her interosseous ligaments. Dr. Osterman opined that from an upper extremity point of view, he would allow her

to do sedentary or light-duty work, as he had reported previously. He opined that appellant was obviously disabled from work due to her lower extremity conditions.

OWCP placed appellant on the periodic compensation rolls as of March 9, 2014.

In a March 11, 2014 report, Dr. Horenstein diagnosed joint pain involving the left ankle and foot. He noted no objective signs of complex regional pain syndrome (or RSD) but ongoing nerve pain. Dr. Horenstein noted that appellant's left ankle was at MMI.

Appellant subsequently submitted a February 27, 2014 report, wherein Dr. Curt Miller, a Board-certified orthopedic surgeon, noted that appellant had no effusion and that she did not have any laxity on examination. Dr. Miller noted that she did have a good deal of pain in her foot on examination and pain in the knee. He noted that appellant may have developed RSD of the left lower extremity.

On July 28, 2014 Dr. Miller noted that he was concerned that appellant may have a tear of the left lateral meniscus. He recommended that appellant undergo an MRI scan.

On August 19, 2014 OWCP received an August 5, 2014 report of an MRI scan of appellant's left knee, wherein Dr. Andrew Gordon, a Board-certified diagnostic radiologist, listed the following impressions: (1) degenerative fraying of the body of the lateral meniscus and mild degenerative blunting of the posterior horn of the lateral meniscus, no discrete meniscal tear; (2) mild tricompartmental osteoarthritis, most pronounced in the patellofemoral compartment; (3) patellar enthesopathy, mild proximal patellar tendinopathy with mild reactive bone marrow edema within the inferior pole of the patella; and (4) small Baker's cyst.

In an August 6, 2014 report, Dr. Philip Moldofsky, a Board-certified diagnostic radiologist, interpreted a nuclear bone scan triple phase as showing no evidence of RSD in the lower legs/ankles.

By letter dated November 7, 2014, counsel for appellant noted his representation of appellant, forwarded a new appointment of representation form, and requested that OWCP provide all documents added to appellant's file since November 16, 2009.

In a November 19, 2014 report, Dr. Bruce H. Grossinger, an osteopath, concluded that appellant sustained right wrist and left foot and ankle injuries as well as RSD of the left lower extremity. He noted that appellant remained disabled from gainful employment.

On November 18, 2014 OWCP received a November 12, 2014 report of investigation by an agent for the employing establishment's Office of the Inspector General (OIG) who had conducted surveillance on appellant from April 18 through August 16, 2014 and observed appellant performing activities which he concluded were inconsistent with her disability status. This included observation of appellant carrying large items, bending for extended periods, twisting, pushing, pulling, standing, walking, sitting, and driving.

The report noted that, on October 30, 2014, the OIG investigator had interviewed Dr. Miller, who indicated that he thought appellant had returned to work in 2010. Dr. Miller responded affirmatively when asked if appellant could perform her full-duty position. He noted

that appellant had a scheduled appointment in September 2014 to review MRI scan results, but she had not attended the appointment. Dr. Miller also responded affirmatively when asked whether appellant's pain complaints were inconsistent with her functional capabilities. In a November 13, 2014 report, he diagnosed left ankle pain and bilateral knee pain. Dr. Miller noted that appellant has mild patella femoral arthritis. He related that there was no evidence of meniscus tear based on the MRI scan and clinical examination. Dr. Miller opined that appellant could return to full duty, except that she should refrain from repetitive kneeling and squatting. He noted that he had never restricted her from work due to her knee condition. Dr. Miller believed that appellant's knees fully recovered from the work injury of 2009.

The OIG investigator interviewed Dr. Leroy Fleischer on October 31, 2014. Dr. Fleischer noted that appellant walked with a slight limp and that appellant complained of chronic left knee and bilateral wrist pain. He had diagnosed RSD, a chronic pain condition. After reviewing the surveillance video, Dr. Fleischer confirmed that appellant had exceeded her medical restrictions, that she could have performed her full-duty job during the surveillance period, and that she had misrepresented her medical condition as her pain complaints were inconsistent with her functional capabilities. He opined that appellant had recovered from all work-related injuries and needed no further medical treatment.

On November 10, 2014 Dr. Osterman was interviewed by the OIG. He noted that he had cleared appellant to return to work in 2010 or 2011. Dr. Osterman stated that, if appellant stayed off work, it was because of her lower extremity injuries. After reviewing the surveillance video, he opined that appellant could have performed her full-duty job during the surveillance period, that her pain complaints were inconsistent with her functional capabilities, and that she had exceeded her medical restrictions.

The OIG investigator reported that Dr. Horenstein reviewed the surveillance video on November 11, 2014 and that, before it ended, Dr. Horenstein stated that he did not need to see anymore, that he got the point, and that based on what he had seen appellant could return to work. Dr. Horenstein told the investigator that the video showed appellant exceeding her restrictions, that she had misrepresented her medical condition to him, that she could have performed her full-duty job during the surveillance period, and that her pain complaints were inconsistent with her functional capabilities. The OIG investigator indicated that when he asked Dr. Horenstein whether it was true that appellant had no residuals of her work injury and no need for further treatment, he replied "yes." Dr. Horenstein signed the statement prepared by the investigator on November 16, 2014.

On December 1, 2014 the OIG investigator interviewed Dr. Grossinger. Dr. Grossinger told the investigator that the video showed that appellant was walking differently from when he saw her and noted that the type of bending he observed appellant doing would be difficult to do for someone with her types of complaints. He stated that he had not placed appellant under restrictions, but that it was clear that appellant exceeded her preinjury job duties. Dr. Grossinger confirmed that appellant could have performed the full-duty job during the surveillance period, that her complaints were inconsistent with her functional capabilities, and that she misrepresented her medical condition to him.

All of the treating physicians completed duty status reports (Form CA-17) returning appellant to full-time, regular-duty work.

By letter dated December 4, 2014, OWCP sent appellant's counsel a copy of the imaged portion of appellant's file *via* CD-ROM.[3]

On December 8, 2014 OWCP received a November 25, 2014 report from Dr. Horenstein wherein he again noted appellant's complaints of foot and ankle pain.

By letter dated December 11, 2014, OWCP notified appellant of its proposal to terminate her wage-loss compensation and medical benefits as the medical evidence of record established that she no longer had residuals or continuing disability stemming from her accepted work injury.

On December 12, 2014 the OIG investigator contacted Dr. Fleischer who stated that, when he saw appellant, he felt obligated to give her medical documentation to keep her off work based on Dr. Grossinger's report. The investigator stated that Dr. Fleischer never changed his own opinion that appellant could work full duty and would like to withdraw the medical note which restricted appellant from returning to work.

In a December 17, 2014 report, Dr. Grossinger noted that appellant had a normal EMG study which did not support lumbar radiculopathy, plexitis or other nerve entrapment of impingement. He diagnosed a left ankle orthopedic injury as well as RSD of the left lower extremity with altered gait. Dr. Grossinger referred her for physical therapy. He noted that he had reviewed surveillance video evidence of appellant engaging in various activities which were in excess of her usual job as a clerk for the employing establishment. Dr. Grossinger reaffirmed the active and ongoing nature of her neurological injuries, but stated that it appeared appellant could work full-time, full duty in her preinjury position. He continued to prescribe medication.

By letter dated December 17, 2014, counsel acknowledged receipt of OWCP's December 11, 2014 correspondence. He noted that, pursuant to Board precedent, medical information procured as a result of a visit to appellant's attending physician without appellant's awareness or ability to comment on the surveillance was illegal, and that all medical information procured as a result of a visit to appellant's attending physicians without appellant's awareness or ability to comment on the surveillance video was illegal. By letter dated December 29, 2014, counsel asked the employing establishment specifically for a copy of the investigative file, including photos and video, if any were taken.

On January 5, 2015 Dr. Grossinger diagnosed orthopedic injuries to both wrists and hands with tenosynovitis status post wrist surgery on December 3, 2009. He advised her to continue with physical therapy and chiropractic care. Dr. Grossinger also opined that, by history, appellant's injuries stemmed from the work accident on April 28, 2009.

[3] The letter was initially dated December 2, 2014. That date was struck through and changed to read December 4, 2014 and it noted that it included documents in the record through December 4, 2014.

In a January 8, 2015 note to file, the human resources manager for the employing establishment stated that the video surrounding this claim was made available to appellant on several occasions, but that she had refused to come to the employing establishment to receive or review the video. In a separate internal note, also dated January 8, 2015, a Mr. Muldoon of the employing establishment noted that appellant' union representative had been made aware of the surveillance video, that the surveillance video was made available for their review upon request, but that no request was made.

In a report dated January 12, 2015, Dr. Osterman opined that appellant's condition was stable. He reviewed appellant's position description and opined that, from an upper extremity point of view, she could perform that job on a regular basis, but with restrictions against constant grasping or ladder climbing and no lifting more than 20 pounds. Dr. Osterman noted that no further treatment was planned for her right wrist damage or her flexor tenosynovitis.

By decision dated January 20, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits, finding that the medical evidence of record established that appellant no longer had any residuals from her employment-related medical condition or continued disability from work as a result of the April 28, 2009 employment injury.

OWCP subsequently received medical reports indicating that Dr. Jason Brajer continued to perform multiple lumbar epidural sympathetic blocks from January 23 through October 13, 2015 for RSD.

In a letter dated January 26, 2015, counsel requested that appellant's claim be expanded to include RSD as an accepted condition.

On January 27, 2015 appellant, through counsel, requested a hearing before an OWCP hearing representative.

At the hearing held on August 27, 2015, appellant discussed her work history and injury. She also recounted her medical treatment and her visit with the second opinion physician. Appellant also testified that she had not given the OIG permission to contact her treating physicians and was not aware of the surveillance. She noted that she still experienced symptoms relating to her work injuries in her foot, legs, and toes, and that her ankle still swelled. Counsel argued that OWCP could not rely on the opinions of appellant's physicians after in-person contact by OIG agents, as it was well-established that the OIG was prohibited from having personal contact with treating physicians. He also argued that the report of the second opinion physician contained very little rationale and that, at a minimum, there was a conflict in medical evidence.

In a November 13, 2015 decision, the hearing representative found that the report of the second opinion physician, Dr. Smith, was sufficiently well-reasoned, ruled out continuing disability, and addressed the claimant's work capacity relative to the accepted conditions. The hearing representative determined that there was insufficient medical evidence to overcome the weight of Dr. Smith's conclusion that the accepted conditions had resolved and that there was no ongoing disability or related residuals of the accepted work injury.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[4] Following a proper termination of compensation benefits, the burden of proof shifts back to the claimant to establish continuing employment-related disability.[5]

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[6] To terminate authorization for medical treatment, OWCP must establish that the claimant no longer has residuals of an employment-related condition which requires further medical treatment.[7]

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for sprain of both wrists, sprain of left knee, contusion of right knee, tenosynovitis right hand, villonodual ulnar synovitis of the left ankle and foot, and left ankle sprain. It terminated appellant's compensation benefits on January 20, 2015, effective February 8, 2015. The hearing representative affirmed the termination of appellant's medical benefits and wage-loss compensation. In reaching this conclusion, she determined that the opinion of the second opinion physician Dr. Smith should be accorded the weight of the medical evidence.

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 8, 2015, based on the well-rationalized opinion of Dr. Smith. Dr. Smith was asked by OWCP for a second opinion regarding the status of appellant's employment-related conditions. In his May 30, 2013 report, he opined that appellant's employment-related conditions had resolved without residuals. Dr. Smith explained that appellant had an elevated level of symptomology and that there appeared to be a large functional component to her symptoms given the lack of objective organic findings from the clinical examination. He indicated that there did not appear to be any additional requirement for treatment, testing, or activity modification with regard to the accepted employment incident. Dr. Smith's opinion was based on a review of appellant's medical record, including objective studies, and his physical examination. His opinion was well rationalized and represents the weight of the medical evidence.[8]

The reports of appellant's treating physicians also support that she no longer had residuals from the accepted employment injury. When Dr. Miller was interviewed by the OIG investigator on October 30, 2014, he told the investigator that appellant's pain complaints were

[4] *Mohamed Yunis*, 42 ECAB 325, 334 (1991); *see also J.P.*, Docket No. 13-1049 (issued August 16, 2013).

[5] *John F. Glynn*, 53 ECAB 155 (2001).

[6] *See T.P.*, 58 ECAB 524 (2007).

[7] *See I.J.*, 59 ECAB 408 (2008); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

[8] *M.K.*, Docket No. 15-1903 (issued May 6, 2016).

inconsistent with her functional capabilities as seen on the surveillance video. In his November 13, 2014 report, he diagnosed left ankle and bilateral knee pain, and mild patella femoral arthritis, but opined that appellant's knees had fully recovered from the 2009 work injury. The Board finds that Dr. Miller supported his opinion with medical rationale that appellant was no longer disabled from her accepted conditions. Dr. Miller noted that, based on the symptoms and activities appellant performed in the surveillance video, it was clear that appellant's pain complaints were inconsistent with her functional capacity.[9] He concluded in his November 13, 2014 report that appellant had recovered from the accepted injury. Dr. Miller's report, therefore, supports the finding that appellant no longer had residuals of the accepted conditions.

Dr. Grossinger noted in his December 17, 2014 report that appellant had a normal EMG study which did not provide supportive evidence of lumbar radiculopathy, plexitis, or other nerve entrapment or impingement. He diagnosed a left ankle orthopedic injury as well as RSD of the left lower extremity with altered gait. The Board notes that appellant's claim has not been accepted for RSD and would not, until accepted, be considered relevant to the termination of compensation benefits for the accepted conditions.[10]

Dr. Grossinger acknowledged that the surveillance video showed appellant engaged in various activities which were in excess of her usual job as a clerk for the employing establishment, but he reaffirmed the active and ongoing nature of her neurological injuries and continued appellant on prescription medication. He did not provide any objective findings to substantiate his opinion. Dr. Grossinger also failed to explain how any of appellant's diagnosed conditions caused disability from her usual employment. Accordingly, his report is of diminished value.[11]

In the March 6, 2014 report, Dr. Osterman noted that, from an upper extremity point of view, appellant was allowed to perform light-duty work, but that she was disabled from work due to her lower extremity conditions. However, when subsequently interviewed by the OIG investigator, he indicated that her pain complaints were inconsistent with the activities shown on the surveillance video. Dr. Horenstein, in his March 11, 2014 report, diagnosed joint pain involving her ankle and foot yet, on November 16, 2014, after meeting with the OIG investigator, he found that she had no residuals from her work injury and no need for further treatment. These reports support that appellant no longer had residuals from her accepted employment conditions.[12]

In his December 8, 2014 report, Dr. Fleischer indicated that appellant's neurologist, Dr. Grossinger, believed that appellant suffered from RSD, that Dr. Grossinger made some changes to her treatment, and hopefully that, as a result, she would have less pain. He offered no comment with regard to employment-related residuals. When interviewed by the investigator,

[9] *See P.M.*, Docket No. 16-1321 (issued January 10, 2017).

[10] *See M.B.*, Docket No. 16-0077 (issued June 1, 2016).

[11] *Supra* note 9.

[12] *See G.M.*, Docket No. 14-2057 (issued May 12, 2015).

Dr. Fleischer opined, after viewing the surveillance video, that appellant had no residuals from her work injury and no further need for medical treatment. As such, his report does not support continuing residuals.[13]

As Drs. Lebovitz, Gordon, and Moldofsky only interpreted diagnostic, objective studies, their reports do not provide a rationalized opinion as to whether appellant had residuals from her accepted employment conditions.[14]

Appellant contended that she had not authorized OWCP to contact her physicians. However, the Board notes that appellant was made aware of the existence of the surveillance video within a reasonable amount of time prior to the January 20, 2015 OWCP decision terminating her benefits. Counsel had requested a complete copy of the record by letter dated November 7, 2014, and OWCP forwarded a copy of the record to counsel by letter dated December 4, 2014. In a December 17, 2014 letter to OWCP, counsel acknowledged the existence of the surveillance video. Furthermore, in a January 8, 2015 memorandum, a human resources manager for the employing establishment indicated that the video had been made available to appellant on several occasions, but that appellant had refused to come in to review it. In a separate memorandum of the same date, a Mr. Muldoon, from the employing establishment, indicated that appellant's union representative had been made aware of the surveillance video, that the surveillance video had been made available to them for review, and that they could receive a copy upon request.

OWCP has the responsibility to make the claimant aware of surveillance video evidence it has provided to a medical expert prior to any termination decision.[15] If appellant requests a copy of the videotape, one should be made available and the employee given a reasonable opportunity to offer any comment or explanation regarding the accuracy of the recording.[16] The evidence of record indicates that counsel was sent a copy of appellant's imaged file by letter dated December 4, 2014, which would have included the surveillance evidence. Furthermore, the record indicates that the employing establishment made the video available to appellant and her union representative upon request, but no request was made. Accordingly, the Board finds that OWCP properly handled the video evidence.[17]

OWCP therefore met its burden of proof to terminate appellant's compensation benefits, effective February 8, 2015.

[13] *Supra* note 9.

[14] *Supra* note 13.

[15] *A.P.*, Docket No. 13-0030 (issued March 18, 2013).

[16] *J.J.*, Docket No. 15-0475 (issued September 28, 2016).

[17] *Id.*

LEGAL PRECEDENT -- ISSUE 2

As OWCP properly terminated appellant's compensation benefits, the burden shifts to appellant to establish continuing disability after that date causally related to her accepted injury.[18] To establish causal relationship between the accepted conditions as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such causal relationship.[19] Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[20]

ANALYSIS -- ISSUE 2

Given the Board's finding that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective February 8, 2015, the burden shifts to appellant to establish continuing disability after that date.[21]

The Board finds that the evidence of record is insufficient to establish continuing disability after February 8, 2015. None of the medical evidence received after the termination of benefits establishes that appellant has continuing disability or residuals from her accepted employment injury. Dr. Brajer continued to administer epidural sympathetic blocks from January 23 to July 21, 2015, however, this treatment was provided for the diagnosed RSD condition. As previously stated, OWCP has not accepted appellant's claim for RSD.[22]

Appellant also submitted a November 25, 2014 report wherein Dr. Horenstein indicated that he treated appellant for foot and ankle pain, but he provided no explanation as to whether appellant was disabled due to her accepted employment conditions.[23] As such, appellant has not met her burden of proof to establish continuing disability after the February 8, 2015 termination of benefits.

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 8, 2015. The Board further finds that

[18] *Manuel Gill*, 52 ECAB 282 (2001).

[19] *R.D.*, Docket No. 16-0982 (issued December 20, 2016).

[20] *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[21] *Supra* note 20.

[22] *Supra* note 10.

[23] *Supra* note 20.

appellant failed to meet her burden of proof to establish continuing disability after February 8, 2015.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 13, 2015 is affirmed.

Issued: July 25, 2017
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