

April 11, 2013 employment injury; and (2) whether appellant has established continuing employment-related residuals or disability after June 1, 2015.

FACTUAL HISTORY

On April 11, 2013 appellant, then a 42-year-old meat cutter, filed a traumatic injury claim (Form CA-1) alleging that on that date he experienced pain in his middle back after lifting boxes.

In a report dated May 2, 2013, Dr. Nicole B. Kohnen, Board-certified in family medicine, found that appellant could work with restrictions on standing over 10 minutes or lifting over 10 pounds. On May 7, 2013 the employing establishment offered appellant a modified position with sedentary duties within the restrictions set forth by Dr. Kohnen. Appellant returned to work on May 7, 2013, but stopped work on that date and did not return. He submitted a note which read: "Sir I [tried]. The pain is [too] much, right now. I can't do it."

The employing establishment controverted the claim because appellant had been released to return to work by Dr. Kohnen and appellant was provided a light-duty position consistent with Dr. Kohnen's restrictions. After working the position for 15 minutes, appellant walked off the job. The employing establishment noted that the light-duty position was still available.

In a decision dated June 5, 2013, OWCP denied appellant's traumatic injury claim as the medical evidence was insufficient to show that he sustained a diagnosed condition as a result of the April 11, 2013 work incident.

Appellant requested a hearing before a hearing representative. On October 30, 2013, following a preliminary review, an OWCP hearing representative reversed the June 5, 2013 decision as the medical evidence established that the lumbar sprain and thoracic sprain was due to the lifting incident at work. The hearing representative approved the case for lumbar and thoracic sprains.

On December 2, 2013 appellant filed claims for wage loss compensation (Form CA-7) beginning May 7, 2013. The employing establishment terminated appellant effective December 13, 2013 for excessive leave.

OWCP formally accepted the conditions of lumbar and thoracic sprains on January 14, 2014. By letter dated March 5, 2014, OWCP advised appellant that the light-duty position remained available and if he chose not to accept it, he would not be eligible to receive wage loss compensation. Appellant did not return to work.³

By decision dated June 5, 2014, OWCP denied his claims for compensation beginning May 7, 2013. It found that the medical evidence of record established that appellant could perform the modified employment position offered by the employing establishment in May 2013. On June 11, 2014 counsel, requested a telephone hearing before an OWCP hearing representative, which was held on January 14, 2015.

³ OWCP referred appellant to work with a nurse to assist in returning him to work. Although on April 1, 2014 appellant advised OWCP that he would accept the light-duty position, he did not return to work.

In a decision dated March 12, 2015, an OWCP hearing representative affirmed the June 5, 2014 decision. She found that the medical evidence of record confirmed that appellant was able to perform the offered modified employment beginning May 7, 2013.

While appellant was pursuing his disability claims, OWCP was developing the medical evidence to determine whether the May 7, 2013 light-duty position was suitable work. Accordingly, on January 13, 2015, OWCP referred appellant to Dr. James F. Hood, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine appellant's work capacity.

Dr. Hood, in a report dated February 26, 2015, reviewed appellant's history of a 1996 injury to his back in the military and his history of motor vehicle accidents. On examination he found some tenderness in the mid-thoracic spine with no radiculopathy, muscle spasm, or loss of strength. Dr. Hood further found a normal straight leg raise. He opined that appellant sustained a sprain as a result of the work injury and that there were "no objective findings that would support any continued residuals." Dr. Hood found that he could resume his usual work without restrictions and required no need for additional medical treatment.

On March 18, 2015 OWCP requested that appellant's attending physician, Dr. Llewelyn Williams, a Board-certified anesthesiologist, review and discuss Dr. Hood's report.

OWCP advised appellant on May 1, 2015 of its proposed termination of his authorization for medical benefits and wage-loss compensation as he had no further need for medical treatment or disability as a result of his accepted employment injury. OWCP afforded appellant 30 days to submit medical evidence or argument supporting refuting the proposed termination. No additional evidence was submitted by appellant.

By decision dated June 1, 2015, OWCP terminated appellant's entitlement to medical benefits and wage-loss compensation effective that date. It found that the opinion of Dr. Hood represented the weight of the medical evidence and established that he had no continuing disability or residuals of his work injury.

On June 8, 2015 appellant, through counsel, requested a telephone hearing.

In a report dated October 7, 2014, received by OWCP on August 31, 2015, Dr. Williams evaluated appellant for neck and back pain, noting that he sustained an injury as a meat processor. He diagnosed chronic pain syndrome, facet syndrome, myofascial pain syndrome, and lumbago. Dr. Williams performed a steroid injection of the left scapula.

Appellant submitted reports from a nurse practitioner dated December 30, 2014 and February 24, 2015.

In a progress report dated April 14, 2015, Dr. Williams discussed appellant's history of a work injury while processing meat and diagnosed chronic pain syndrome, facet syndrome, myofascial pain syndrome, and lumbago. He performed a trigger point injection of the left scapula.

On July 22, 2015 Dr. Williams noted that appellant experienced increased pain after assisting a friend in moving a television. He diagnosed chronic pain and myofascial pain syndrome, lumbago, chronic pain syndrome, and drug dependence. Dr. Williams advised that appellant injured himself in meat processing. Appellant received three injections and continued to take medication. Dr. Williams noted that appellant had an exacerbation a few days prior and required a functional capacity evaluation to see if he could resume his usual work.

At the hearing, held on February 19, 2016, appellant described his continued symptoms and limitations. Counsel maintained that he had submitted medical reports from Dr. Williams demonstrating that he required additional medical treatment.

By decision dated May 4, 2016, OWCP's hearing representative affirmed the June 1, 2015 decision. She noted that Dr. Williams had not attributed any condition or disability to appellant's April 11, 2013 employment injury.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays wage-loss compensation or medical benefits, it has the burden of proof to justify modification or termination of these benefits. It may not terminate these benefits without establishing that the disability or the need for medical treatment ceased or that it was no longer related to the employment.⁴ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

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

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained lumbar and thoracic sprains due to an April 11, 2013 employment injury. In a report dated May 2, 2013, Dr. Kohnen determined that appellant could work with restrictions. The employing establishment offered him a position within the restrictions set forth by Dr. Kohnen. Appellant returned to modified duty on May 7, 2013, but stopped work shortly thereafter. In decisions dated June 5, 2014 and March 12, 2015, OWCP found that he was not entitled to compensation for disability beginning May 7, 2013 as there was work available within his restrictions.

⁴ *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁵ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁶ *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

⁷ *Id.*

On January 13, 2015 OWCP referred appellant to Dr. Hood for a second opinion examination. Based on Dr. Hood's report, OWCP proposed to terminate wage-loss compensation and authorization for medical treatment. As appellant was not receiving wage loss compensation, however, the termination was for medical treatment.⁸ The issue is whether he has residuals of his employment injury entitling him to further medical treatment.

The Board finds that OWCP met its burden of proof to terminate appellant's medical benefits effective June 1, 2015. In a February 26, 2015 report, Dr. Hood noted that appellant had a preexisting back injury while in the military. He found a negative straight leg raise and no evidence of radiculopathy, muscle spasm, or reduced strength on examination, but some mid-thoracic tenderness. Dr. Hood opined that appellant had no objective residuals of his accepted sprains. He found that appellant required no further medical treatment and could resume work without restrictions. Dr. Hood provided a comprehensive and well-rationalized opinion, finding that there were no objective findings of lumbar or thoracic sprain. Moreover, he provided detailed findings on examination and reached conclusions regarding appellant's condition which comported with his findings.⁹ Consequently, Dr. Hood's opinion represents the weight of the evidence and establishes that he had no further need for medical treatment as a result of his accepted work injury.¹⁰

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's medical benefits, the burden shifted to him to appellant to establish continuing disability or residuals after that date related to his accepted injury.¹¹ To establish a causal relationship between the condition 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 a causal relationship.¹² Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹³ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁴

⁸ See *L.E.*, Docket No. 09-1855 (issued June 2, 2010); *A.C.*, Docket No. 07-2423 (issued May 15, 2008).

⁹ See *Pamela K. Guesford*, *supra* note 6.

¹⁰ See *M.B.*, Docket No. 15-1125 (issued September 14, 2016).

¹¹ *Manual Gill*, 52 ECAB 282 (2001).

¹² *Id.*

¹³ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

ANALYSIS – ISSUE 2

The Board finds that the evidence submitted subsequent to OWCP's termination of medical benefits is insufficient to show that appellant required further medical treatment or had any continuing disability for his accepted work injury. On October 7, 2014 Dr. Williams discussed appellant's symptoms of pain in his neck and back and noted that he sustained an injury working in meat processing. He diagnosed chronic pain syndrome, facet syndrome, myofascial pain syndrome, and lumbago. Dr. Williams, however, did not attribute the diagnosed conditions to the accepted employment injury or otherwise address causation. Thus, his opinion in the October 7, 2014 report is of little probative value.¹⁵

Dr. Williams, on April 14, 2015, reviewed appellant's history of a work injury while processing meat and diagnosed chronic pain syndrome, facet syndrome, myofascial pain syndrome, and lumbago. He performed a trigger point injection of the left scapula. OWCP has only accepted lumbar and thoracic strains. Where appellant claims that a condition not accepted or approved by OWCP was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.¹⁶ A well-rationalized opinion is also particularly warranted when there is a history of a preexisting condition.¹⁷ While Dr. Williams noted appellant's history of a work injury, he did not specifically attribute the diagnosed conditions to the work injury or otherwise address causation. Consequently, the Board finds the opinion in this report is also of little probative value.¹⁸

On July 22, 2015 Dr. Williams noted that appellant had increased pain after assisting a friend while moving a television. He diagnosed chronic pain and myofascial pain syndrome, lumbago, chronic pain syndrome, and drug dependence. Dr. Williams indicated that appellant had sustained a meat processing injury and still took medication. Again, however, OWCP did not accept the claim for myofascial pain syndrome, lumbago, chronic pain syndrome, or drug dependence. Further, Dr. Williams did not address the cause of the diagnosed conditions or provide any rationale for his findings. A physician must provide an opinion on whether the employment injury described caused or contributed to a diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical, and rationale.¹⁹ The Board thus finds that appellant has not established disability or residuals of his employment injury after June 1, 2015, the date of OWCP's termination decision.

¹⁵ See *J.L.*, Docket No. 15-1802 (issued August 15, 2016).

¹⁶ See *S.E.*, Docket No. 15-0888 (issued September 14, 2016); *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

¹⁷ See *T.M.*, docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁸ See *supra* note 15.

¹⁹ See *J.E.*, Docket No. 14-1132 (issued December 24, 2014); *John W. Montoya*, 54 ECAB 306 (2003).

Appellant also provided reports from a nurse practitioner dated December 30, 2014 and February 24, 2015. However, a nurse or nurse practitioner is not considered a “physician” as defined by FECA and cannot render a medical opinion.²⁰

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 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 eligibility for medical benefits, effective June 1, 2015, as he had no residuals of his accepted April 11, 2013 employment injury. The Board further finds that he has failed to establish continuing employment-related residuals or disability after June 1, 2015 due to the accepted conditions.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2016 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: March 23, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees’ Compensation Appeals Board

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

²⁰ 5 U.S.C. § 8101(2); *see R.E.*, Docket No. 16-1568 (issued February 9, 2017) (nurse practitioners are not considered physicians as defined by FECA); *M.B.*, Docket No. 16-1188 (issued January 10, 2017) (nurses are not considered physicians by section 8101(2) of FECA.