

ISSUES

The issues are: (1) whether OWCP met its burden of proof to rescind its acceptance of appellant's claim for herniated disc at C4-5; (2) whether OWCP properly terminated appellant's wage-loss and medical benefits effective September 4, 2014 as she no longer had any residuals causally related to her accepted February 3, 2013 employment-related injury; and (3) whether appellant met her burden of proof to establish continuing residuals on or after September 4, 2014 due to her February 3, 2013 work injury.

FACTUAL HISTORY

On February 3, 2013 appellant, then a 43-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on that day she sustained pain on the left side of her neck and left arm when she helped reposition a patient in a chair. She stopped work on February 3, 2013. Appellant returned to limited duty on February 12, 2013 and resumed regular duty on June 6, 2013. OWCP initially accepted the claim for left shoulder acromioclavicular sprain. On January 31, 2014 it expanded the acceptance of the claim to include cervical herniated disc at C4-5.

In a February 3, 2013 employee health note, appellant reported pain and swelling to her entire left arm. She indicated that she had injured her arm at work in the past. Appellant later reported her right arm being numb and hot.

A March 19, 2013 electrodiagnostic study revealed a mild C6 radiculopathy. In a report dated April 28, 2013, Dr. James Johnson, the interpreting physician, indicated that the cervical magnetic resonance imaging (MRI) scan revealed normal cervical alignment as well as degenerative changes of the cervical region, congenital fusion of C7 and T1, and congenital cervical spinal canal stenosis from C1 through C7. He noted that there was no disc space narrowing at C4-5, but there was degenerative disc desiccation. There was diffuse disc bulge with posterior lateral osteophyte and left greater than right uncovertebral osteophyte causing severe canal stenosis with slight compression and impingement of the cord. There was no signal change in the cord and mild bilateral foraminal stenosis was worse on the left side than right. There was no herniation.

In September 2013, appellant transferred to the employing establishment in Atlanta, Georgia. She began treatment with Dr. Murray D. Robinson, a Board-certified neurosurgeon. In his initial report of November 7, 2013, Dr. Robinson noted that the trauma occurred while lifting at work 10 months ago on February 3, 2013. He diagnosed cervical spinal stenosis and disc disease. Dr. Robinson noted that appellant was pregnant and recommended that she undergo an anterior cervical discectomy and fusion at C4-5 following her pregnancy. He took appellant off work.

In a November 19, 2013 letter, OWCP requested that Dr. Robinson clarify his report and explain, with medical rationale, how the conditions he diagnosed were caused or aggravated by the February 3, 2013 work injury. In a December 18, 2013 response, Dr. Robinson opined that per appellant's history, her neck and arm pain and C4-5 herniated disc were secondary to her February 3, 2013 work injury.

On November 20, 2013 appellant filed Form CA-7 claim for compensation for leave without pay for the period November 7, 2013 to January 9, 2014.

On January 31, 2014 OWCP accepted displacement of intervertebral disc without myelopathy as causally related to the accepted injury.

By decision dated February 4, 2014, OWCP denied the claim for compensation for the period November 7, 2013 to January 9, 2014. It found appellant had failed to provide evidence that disability was as a result of the work injury sustained on February 3, 2013.

On March 5, 2014 OWCP received appellant's February 2, 2014 request for reconsideration and her letter dated February 28, 2014, in which she stated that she was off work because her condition had worsened.

Evidence included a March 21, 2014 office visit note and an imaging requisition form from Dr. Robinson discussing the treatment plan. In a February 25, 2014 letter, Dr. Robinson indicated that he had seen appellant one time on November 7, 2013 and that he could not state whether or not any of her symptoms had changed. He stated that his opinions were based on "diagnostic studies that indicated stenosis and radiculopathy and a physical examination."

By decision dated March 27, 2014, OWCP denied modification of its February 4, 2014 decision. It found that there was no medical evidence of record which established that appellant was disabled due to the February 3, 2013 work injury for the period in question.

In March 2014, OWCP referred appellant's medical records and Dr. Robinson's surgery request to an OWCP medical adviser. It requested that the medical adviser offer an opinion on whether the February 3, 2013 work injury caused or contributed to appellant's cervical osteophyte, stenosis, and/or cervical radiculopathy conditions. In a March 20, 2014 report, the medical adviser related that appellant had chronic, long-standing multilevel degenerative disc disease at C3-4 and C6-7. He also noted that she had a congenital fusion at C7-T1 with combined degenerative stenosis producing left-sided C6 radiculopathy. The medical adviser stated that those changes have been present since birth and further evolved from day-to-day activities of daily living, but they were not work related. He noted that osteophytes take years to develop. The medical adviser indicated that the initial wrist/shoulder sprain diagnosis was treated appropriately. He opined that the C4-5 herniated nucleus pulposus/displacement was not related to the work injury of helping reposition a patient in a chair and would not cause or contribute to the development of her cervical osteophyte, stenosis, or radiculopathy. The medical adviser recommended that those conditions be denied.

On April 11, 2014 OWCP received appellant's April 8, 2014 request for reconsideration of its March 27, 2014 decision. In an April 8, 2014 letter, appellant indicated that she was entitled to wage-loss compensation during the claimed period as she was taken off work due to her injury, not her pregnancy.

In November 7, 2013 patient instructions Dr. Robinson advised appellant not to work.

In May 2014, OWCP referred appellant, a statement of accepted facts, the case record and a series of questions, to Dr. Alexander N. Doman, a Board-certified orthopedic surgeon, for

a second opinion evaluation. By decision dated June 5, 2014, OWCP again denied modification of its February 4, 2014 decision. It found that appellant had not provided medical evidence with objective findings to support her claimed disability for the period November 7, 2013 through January 9, 2014. In a June 7, 2014 report, Dr. Doman reviewed the statement of accepted facts, discussed his review of appellant's medical records and described her examination findings. He indicated that she was tender over the left side of her neck and left trapezius muscles. Dr. Doman found no signs of muscular atrophy, deep tendon reflexes were symmetric, her grip strength and manual dexterity were normal, her rotator cuff strength in the left shoulder was excellent, there were no signs of muscular atrophy, there was no shoulder instability, and she had a negative impingement sign. He diagnosed congenital cervical stenosis. Dr. Doman opined that the accepted work-related conditions of left shoulder strain and the herniated cervical disc had resolved. He stated that appellant's current cervical condition had been documented as representing a congenital condition of narrowing of the cervical canal resulting in a congenital cervical stenosis that resulted in her present condition, including a left-sided radiculopathy. Dr. Doman indicated that appellant was not symptomatic from the herniated cervical disc. Rather, appellant's present condition represented the natural history of her underlying disorder. Dr. Doman opined that appellant's work activities did not result in a temporary or permanent aggravation of her underlying congenital and degenerative cervical condition. He opined that appellant was capable of performing the duties of nursing assistant as the accepted work injuries had resolved. Dr. Doman noted that appellant would have work restrictions for her congenital and degenerative condition of the cervical spine.

In a July 1, 2014 report, Dr. Robinson provided an assessment of cervical spinal stenosis. He related that appellant could not return to work and was being scheduled for surgery. In a July 28, 2014 report, Dr. Robinson stated that per appellant's history, her neck and arm pain started after the February 3, 2013 work injury; therefore, he found that her C4-5 disc herniation and need for surgery were secondary to the work injury.

A July 23, 2014 cervical spine magnetic resonance imaging (MRI) scan revealed that appellant has multilevel cervical disc osteophyte complex resulting in moderate canal stenosis, particularly on the left at C5-6 and on the right at C6-7 with neural foraminal narrowing. The MRI scan also showed the C7-T1 congenital fusion.

On July 28, 2014 OWCP advised appellant that it proposed to terminate her medical and wage-loss compensation benefits.³ It accorded the weight of the medical evidence to Dr. Doman. Appellant was afforded 30 days to submit evidence and argument challenging the proposed termination.

In a July 30, 2014 report, Dr. Tamara S. Greene, a Board-certified neurologist, diagnosed cervical spinal stenosis and left arm pain. She indicated that appellant's examination was notable for giveaway weakness and limited volitional effort. Dr. Greene also suspected that some of appellant's findings were nonphysiologic. She noted that recent electrodiagnostic testing was forthcoming.

³ Appellant was not in receipt of wage-loss compensation benefits at the time of the proposed termination.

By letter dated August 28, 2014, OWCP advised appellant that it proposed to rescind its acceptance of the C4-5 herniated disc. It discussed Dr. Doman's opinion and stated that OWCP had accepted the cervical condition in error, as there was no evidence that this condition was related to the February 3, 2013 work injury. OWCP afforded appellant 30 days to submit evidence and argument challenging the proposed rescission action.

By decision dated September 4, 2014, OWCP terminated appellant's medical and wage-loss compensation benefits for the accepted left shoulder sprain effective September 4, 2014.⁴ It found that the weight of the medical evidence rested with Dr. Doman's July 3, 2014 opinion that there were no ongoing residuals or disability of appellant's left shoulder sprain.

On September 12, 2014 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

In a September 24, 2014 statement, appellant outlined her contention that her cervical herniated disc C4-5 was due to the February 3, 2013 work injury.

Also received were a July 23, 2014 admission record from DeKalb Medical, an electronic mailing from the employing establishment in Salisbury, NC dated September 8, 2014, appellant's September 25, 2014 letter to a Mr. Fitzgerald which included her September 24, 2014 statement, and letters from the employing establishment in Salisbury, NC dated September 2, 5, and October 8, 2014.

By decision dated October 21, 2014, OWCP rescinded its acceptance of the C4-5 herniated disc effective October 21, 2014. It found that, while appellant had a congenital cervical condition and cervical herniated disc C4-5, the weight of the medical evidence established that the condition was not related to the February 3, 2013 work injury.

On November 3, 2014 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

On April 7, 2015 a telephonic hearing was held before a hearing representative of OWCP's Branch of Hearings and Review with regard to OWCP's September 4 and October 21, 2014 decisions. At the hearing, appellant testified that she had no problems with her neck prior to February 2, 2013. She also indicated that she did not have the cervical surgery and she continued to be treated by Dr. Robinson. Appellant also stated that, while she did return to work, she reinjured her shoulder and the left side of her neck a couple of weeks ago and went to employee health.⁵ No new medical evidence was submitted.

By decision dated June 2, 2015, an OWCP hearing representative affirmed OWCP's decisions of September 4 and October 21, 2014. She found that OWCP had met its burden of proof to rescind acceptance of herniated cervical disc at C4-5. The hearing representative also

⁴ *Id.*

⁵ The hearing representative noted that OWCP assigned case number xxxxx968 to the claimed traumatic injury of March 9, 2015. By decision dated May 7, 2015, OWCP denied the claim as the evidence did not establish causal relationship.

found OWCP had met its burden of proof to terminate appellant's benefits for her accepted left shoulder strain as the weight of the medical evidence rested with Dr. Doman.

A September 28, 2015 MRI scan report indicated that disc/osteophyte complexes were flattening appellant's spinal cord at C3-4, C5-6, and C6-7.

In an October 2, 2015 report, Dr. Fred Koch, a Board-certified orthopedic surgeon, indicated that appellant's history dated back to 2013 when she was working at an employing establishment facility in North Carolina. He reported that she was injured when a patient grabbed onto her arm and started pulling. Appellant complained of significant pain involving her neck and left upper extremity. Dr. Koch noted her symptoms and that she had not undergone cervical surgery. Appellant returned to work and was reinjured in March of this year, when a patient again pulled on her arm. Dr. Koch provided examination findings and noted that the MRI scan from September 2014 documented multilevel spinal stenosis and nerve root impingement. He noted neck and left upper extremity pain following the two work-related injuries with fairly severe spinal stenosis. Dr. Koch recommended surgery. He opined that appellant's current symptomology was multifactorial based primarily on her history of two work-related injuries. Dr. Koch noted that she also had some preexisting evidence of degenerative changes, but that it seems her initial problems began with her first injury in North Carolina and was aggravated by her second injury here.

On November 12, 2015 OWCP received counsel's November 6, 2015 request for reconsideration.

By decision dated January 4, 2016, OWCP denied modification of its June 2, 2015 decision. It found the new evidence insufficient to establish that the February 3, 2013 work injury caused a permanent aggravation of appellant's cervical spine degenerative disc disease and stenosis.

LEGAL PRECEDENT -- ISSUE 1

Section 8128 of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.⁶ The Board has upheld OWCP's authority to reopen a claim at any time on its own motion under 5 U.S.C. § 8128 and, where supported by the evidence, set aside or modify a prior decision and issue a new decision. The power to annul an award, however, is not an arbitrary one and an award for compensation can only be set aside in the manner provided by the compensation statute. OWCP's burden of justifying termination or modification of compensation holds true where OWCP later decides that it has erroneously accepted a claim for compensation. In establishing that its prior acceptance was erroneous, OWCP is required to provide a clear explanation of its rationale for rescission.⁷

⁶ 5 U.S.C. § 8128.

⁷ *G.C.*, Docket No. 15-0370 (issued December 2, 2015); *K.H.*, Docket No. 13-1723 (issued June 17, 2014).

ANALYSIS -- ISSUE 1

OWCP accepted that on February 3, 2013 appellant sustained a left shoulder sprain when she was helping a coworker reposition a patient in a chair and felt pain in the left side of her neck and left arm. On January 31, 2014 it expanded the accepted conditions to include a cervical herniated disc at C4-5, based upon the reports from Dr. Robinson.

In an October 21, 2014 decision, OWCP rescinded its acceptance of appellant's condition of cervical herniated disc at C4-5, based upon the second opinion of Dr. Doman. It explained that the medical evidence of record contained rationalized medical opinion evidence showing that appellant's cervical herniated disc at C4-5 was not due to the February 3, 2013 work injury. OWCP's burden of proof to rescind requires rationalized medical opinion in support of its decision.⁸ The Board finds that OWCP did not meet its burden of proof to rescind its acceptance of cervical herniated disc at C4-5.⁹

In his July 3, 2014 report, Dr. Doman, a Board-certified orthopedic surgeon and OWCP referral physician, detailed appellant's factual and medical history and described the February 3, 2013 work incident. He stated that appellant's "current cervical condition" had been clearly documented as representing a congenital condition resulting in narrowing of the cervical canal resulting in a congenital cervical stenosis. In discussing appellant's current condition, he related that appellant was not symptomatic from a herniated cervical disc. Dr. Doman thus found that at the time of his evaluation appellant no longer had residuals of the accepted cervical disc condition.

Dr. Doman determined that appellant never had a herniated C4-5 disc; rather he opined that this accepted condition had resolved. Thus, OWCP failed to meet its burden of proof to rescind benefits. There is no evidence that the C4-5 herniated disc was improperly accepted.¹⁰

LEGAL PRECEDENT -- ISSUE 2

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹¹ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for

⁸ *D.H.*, Docket No. 13-1885 (issued May 12, 2014).

⁹ 5 U.S.C. § 8128; *G.C.*, *supra* note 7.

¹⁰ *See Donald Henry*, Docket No. 95-2251 (issued July 11, 1997).

¹¹ *Jason C. Armstrong*, 40 ECAB 907 (1989).

¹² *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.¹³

The Board has noted that in assessing medical evidence the weight of such evidence is determined by its reliability, its probative value, and its convincing quality. The factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹⁴ Medical rationale is a medically sound explanation for the opinion offered.¹⁵

ANALYSIS -- ISSUE 2

OWCP terminated appellant's wage-loss compensation and medical benefits effective September 4, 2014.¹⁶ The weight of the medical opinion evidence was given to Dr. Doman, the referral physician, who opined that the left shoulder strain had resolved.

The Board finds that OWCP presented rationalized medical evidence from Dr. Doman, based on a complete and accurate factual and medical history showing that by September 4, 2014, appellant ceased to have residuals of her February 3, 2013 work injury.

In his June 9, 2014 narrative report, Dr. Doman detailed appellant's factual and medical history and reported findings upon physical examination. He noted that, while appellant was tender over the left side of her neck and left trapezius muscles, there was no objective evidence of muscular atrophy, diminished grip or strength, or shoulder instability. Appellant also had a negative impingement sign. In relevant part, Dr. Doman opined that the accepted work-related conditions of left shoulder strain had resolved.

The Board finds that Dr. Doman's opinion represents the weight of the medical evidence on this issue. Dr. Doman provided a detailed medical report reviewing the numerous medical reports and evidence of record. He unequivocally opined that appellant did not have continuing residuals of an employment-related left shoulder condition and provided a medical explanation supported by objective findings. Dr. Doman's opinion was based on an accurate background. The Board finds that his second opinion is probative and well rationalized and represents the weight of the medical evidence.¹⁷

¹³ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

¹⁴ *Gary R. Sieber*, 46 ECAB 215 (1994).

¹⁵ See *Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator that the conclusion drawn is rational, sound and logical).

¹⁶ As previously noted, appellant was not in receipt of wage-loss compensation benefits at the time of the proposed termination or the termination.

¹⁷ See *M.K.*, Docket No. 15-1903 (issued May 6, 2016).

Dr. Robinson opined that appellant had residuals from her work injury. However, he failed to provide a well-rationalized opinion, with supporting objective evidence. Dr. Robinson also did not address whether appellant had an ongoing work-related left shoulder sprain. His reports do not contain a probative, rationalized medical opinion, with objective findings, indicating that appellant still had residuals from the accepted conditions. For these reasons, Dr. Robinson's opinion is insufficiently rationalized to create a conflict with Dr. Doman's opinion.

In her July 30, 2014 report, Dr. Greene diagnosed appellant with cervical spinal stenosis. However this is not an accepted condition. Dr. Greene did not provide an opinion, supported by objective evidence that appellant had an ongoing left shoulder sprain due to her February 3, 2013 work injury.¹⁸

The Board finds that the medical evidence of record was sufficient to meet OWCP's burden of proof in this case. Dr. Doman provided a well-rationalized opinion that represents the weight of the medical evidence that the left shoulder strain had resolved.

LEGAL PRECEDENT -- ISSUE 3

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative, and substantial evidence that she had an employment-related disability which continued after termination of compensation benefits.¹⁹

ANALYSIS -- ISSUE 3

Following the termination of her compensation benefits, appellant submitted additional medical evidence. The Board has found that the opinion of Dr. Doman justified the termination of appellant's compensation benefits effective September 4, 2014; therefore, the burden shifts to appellant to establish disability after that date.²⁰ The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish entitlement to further benefits.

Appellant submitted an October 2, 2015 medical report in which Dr. Koch provided an impression of neck and left upper extremity pain following two work-related injuries (one in 2013 and another in March 2015) with fairly severe spinal stenosis. He provided examination findings and recommended surgery based on the MRI scan from September 2014 which documented multilevel spinal stenosis and nerve root impingement. Dr. Koch opined that appellant's current symptomology was multifactorial based primarily on her history of two work-related injuries. He noted that she had some preexisting evidence of degenerative changes, but

¹⁸ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁹ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

²⁰ *Id.*

that it seems her initial problems began with her first injury in North Carolina and was aggravated by her second injury. Dr. Koch's opinion is insufficient to establish that the February 3, 2013 work injury resulted in a permanent aggravation of appellant's preexisting cervical degenerative disc disease and stenosis. He did not provide any medical reasoning in support of his conclusions of additional injuries/worsening condition and merely concluded that appellant's extensive diagnosed conditions resulted from her employment. Dr. Koch did not address the issue of appellant's underlying congenital spinal condition or any changes which would indicate an aggravation of her underlying condition caused by factors of her employment. His explanation is both speculative and vague. Thus, Dr. Koch's report is of diminished probative value.²¹

The September 28, 2015 MRI scan report indicated that disc/osteophyte complexes were flattening appellant's spinal cord at C3-4, C5-6, and C6-7. However, diagnostic reports are insufficient to discharge appellant's burden of proof as they do not offer a physician's opinion on causal relationship.²²

On appeal counsel contends that the "claim was rescinded on flimsy evidence and anti-claimant reasoning." These general and quixotic contentions are baseless and consequently without merit. For the reasons set forth above, while OWCP did not meet its burden of proof to rescind its acceptance of cervical herniated disc at C4-5, it did meet its burden of proof to terminate appellant's wage-loss and medical benefits effective September 4, 2014 based on the accepted left shoulder condition. Appellant did not meet her burden of proof to establish continued disability after September 4, 2014 due to her February 3, 2013 work injury.

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 did not meet its burden of proof to rescind its acceptance of cervical herniated disc at C4-5. The Board further finds that it met its burden of proof to terminate appellant's wage-loss and medical benefits effective September 4, 2014 based on the accepted left shoulder condition. Appellant did not meet her burden of proof to establish continuing disability after September 4, 2014 due to her February 3, 2013 work injury.

²¹ *L.G.*, Docket No. 09-1692 (issued August 11, 2010).

²² *See supra* note 19.

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2016 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part.

Issued: May 2, 2017
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