

**United States Department of Labor
Employees' Compensation Appeals Board**

D.B., Appellant

and

**DEPARTMENT OF THE ARMY,
NONCOMMISSIONED OFFICER ACADEMY
DINING FACILITY, Baumholder, Germany,
Employer**

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) **Docket No. 17-1045**
) **Issued: April 20, 2018**
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 12, 2017 appellant filed a timely appeal from a March 23, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation benefits effective March 24, 2017 as she had no further residuals or disability causally related to her January 11, 1993 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 13, 1993 appellant, then a 35-year-old cook, filed a traumatic injury claim (Form CA-1) alleging that on January 11, 1993 she injured her back, arm, neck, and hand after she fell on a mat. OWCP accepted the claim for a left hand contusion, displacement of a cervical intervertebral disc without myelopathy at C6-7, intervertebral disc disorder with myelopathy at C6-7, and cervical spondylosis without myelopathy at C5-6 and C6-7. On August 5, 1993 appellant underwent an anterior cervical discectomy and fusion at C6-7 and on October 3, 1996 she underwent surgery to remove cervical hardware. OWCP paid her compensation for total disability beginning 1993.²

The employing establishment, on September 25, 2015, submitted her position description for the job of cook signed by her supervisor. The duties included sitting not more than one hour per day, walking no more than seven hours per day, lifting no more than 40 pounds, bending not more than one hour per day, kneeling and twisting no more than one hour per day, and standing not more than seven hours per day. The position also required reaching over the shoulder with both arms.

On September 20, 2016 OWCP referred appellant to Dr. Douglas P. Hein, a Board-certified orthopedic surgeon, for a second opinion examination.³ In a report dated October 5, 2016, Dr. Hein reviewed her history of injury and resultant surgeries. On examination he found a loss of cervical motion and “significant left shoulder dysfunction which has no direct relationship to the described injuries.” Dr. Hein diagnosed cervical disc protrusion treated with surgery at C6-7 and multilevel cervical spondylitis without radiculopathy causally related to appellant’s accepted employment injury. He determined that the accepted conditions had not resolved, but that her residuals “would not prevent [appellant] from returning to her date[-]of[-]injury position as a cook.” Dr. Hein opined that appellant could perform sedentary to light work. He advised that the majority of her restrictions related to her left shoulder condition and precluded “above shoulder lifting activities and heavy lifting activities with [appellant’s] left upper extremity.” In an accompanying October 5, 2016 work restriction evaluation (OWCP-5c), Dr. Hein listed the accepted conditions as a cervical disc with myelopathy and cervical spondylosis surgically treated. He found that appellant could perform sedentary and light work with restrictions on pushing, pulling, and lifting up to 20 pounds and no reaching over the shoulder with the left upper extremity.

On January 10, 2017 OWCP requested that appellant submit updated medical evidence addressing her current employment-related diagnoses and the extent of any disability.

² OWCP accepted that appellant sustained a left hand contusion due to the same January 11, 1993 employment incident under file number xxxxxx031. OWCP combined file number xxxxxx031 into file number xxxxxx187.

³ On May 19, 2014 Dr. Raymond Derry Crosby, an osteopath and OWCP referral physician, recommended a functional capacity evaluation to determine appellant’s work restrictions. After reviewing a functional capacity evaluation, he found, in a July 29, 2014 report, that she could return to her usual employment with restrictions of lifting 20 to 50 pounds occasionally, 10 to 25 pounds frequently, and up to 10 pounds constantly. Dr. Crosby further found that appellant could lift no more than 20 pounds above chest level and could reach over her shoulders no more than four hours.

OWCP, on February 8, 2017, advised appellant of its proposed termination of her wage-loss compensation. It afforded her 30 days to respond to the proposed termination of her compensation.

By decision dated March 23, 2017, OWCP terminated appellant's wage-loss compensation benefits, effective March 24, 2017. It found that the weight of the evidence, as represented by the opinion of Dr. Hein, established that she had no further residuals or disability causally related to her accepted employment injury.

On appeal appellant contends that she remains disabled from work.

LEGAL PRECEDENT

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

ANALYSIS

OWCP accepted that appellant sustained a left hand contusion, displacement of a cervical intervertebral disc without myelopathy at C6-7, intervertebral disc disorder with myelopathy at C6-7, and cervical spondylosis without myelopathy at C5-6 and C6-7 due to a January 11, 1993 employment injury. It authorized an anterior cervical discectomy and fusion at C6-7 on August 5, 1993 and the removal of cervical hardware on October 3, 1996. OWCP paid appellant compensation for total disability from 1993 onward.

In his second opinion report of October 5, 2016, Dr. Hein diagnosed cervical disc protrusion and cervical spondylitis due to the accepted employment injury and left shoulder dysfunction unrelated to the January 11, 1993 work injury. He opined that appellant continued to have residuals of her injury, but advised that her restrictions would not prevent her from resuming her job as a cook. Dr. Hein attributed the majority of her restrictions to her nonemployment-related left shoulder condition, which he found prevented her from lifting above the shoulder or heavy lifting on the left side. In his answers to OWCP's questions, he opined that appellant could perform sedentary to light work. In a work restriction evaluation (Form OWCP-5c), Dr. Hein determined that she could push, pull, and lift up to 20 pounds and perform no reaching over the shoulder on the left side.

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation benefits as the report from Dr. Hein is insufficient to show that she could resume her usual work as a cook. Dr. Hein found that she could perform sedentary to light work and specifically limited her lifting up to 20 pounds. The physical requirements of appellant's date-

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

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

of-injury position as a cook, however, included lifting of up to 40 pounds.⁶ As Dr. Hein found that she could not perform the lifting requirements for her date-of-injury position, his opinion is insufficient to establish that she had no further employment-related disability.⁷ While he attributed appellant's disability in part to a nonwork-related left shoulder condition, the Board notes that it is not necessary to prove a significant contribution of factors of employment for the purpose of establishing causal relationship.⁸ If a work factor contributed in any way to her condition, the condition is compensable.⁹ Consequently, the Board finds that OWCP failed to meet its burden of proof to terminate her wage-loss compensation.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation benefits effective March 24, 2017 as she had no further residuals or disability causally related to her January 11, 1993 employment injury.

⁶ The Department of Labor's *Dictionary of Occupational Titles* defines sedentary work as lifting up to 10 pounds and light work as lifting up to 20 pounds occasionally or 10 pounds frequently. Medium work necessitates lifting 20 to 50 pounds occasionally or 10 to 25 pounds frequently.

⁷ See *Charles Alford*, Docket No. 95-0665 (issued April 17, 1997).

⁸ See *B.B.*, Docket No. 16-0734 (issued October 19, 2016).

⁹ See *A.A.*, Docket No. 15-0937 (issued August 17, 2015).

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2017 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 20, 2018
Washington, DC

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

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

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