

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's compensation benefits, effective April 22, 2016; and (2) whether appellant met her burden of proof to establish any continuing disability or residuals on and after April 22, 2016.

FACTUAL HISTORY

On May 16, 2008 appellant, then a 39-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that, on that date, she first realized that her right wrist condition was caused by factors of her federal employment. She returned to work on May 17, 2008. OWCP accepted the claim for right de Quervain's syndrome and bilateral carpal tunnel syndrome and paid appellant wage-loss compensation from September 13, 2008 through October 24, 2009 on the supplemental rolls.⁴ By letter dated November 12, 2009, it placed her on the periodic rolls for temporary total disability as of October 25, 2009.

Appellant filed a separate occupational disease claim, assigned OWCP File No. xxxxxx188, alleging injury as of June 26, 2008, which was accepted for left de Quervain's tenosynovitis/left radial styloid tenosynovitis.⁵

Appellant was initially treated by Dr. Alphonse J. Digiovanni, a Board-certified general surgeon, Dr. Wayne Henstschel, an osteopath specializing in family medicine, and Dr. Chandra Reddy, a physician specializing in general surgery, for right de Quervain's syndrome. On September 10, 2008 she came under the care of Dr. Scott Fried, a Board-certified orthopedic surgeon, for tendinitis, bilateral de Quervain's tenosynovitis, bilateral upper extremities sympathetically mediated pain syndrome, bilateral radial neuropathy, bilateral radial neuritis, brachial plexitis, right wrist scapholunate ligament grade 2, left wrist grade 1 radioulnar joint injury, left overuse syndrome, bilateral posterior occipital neuralgia, and bilateral carpal tunnel median neuropathy. Appellant was also seen by Dr. Steven J. Valentino, a Board-certified orthopedic surgeon, for bilateral de Quervain's syndrome.

Appellant continued to treat with Dr. Fried, who continued to opine that appellant had residuals of her accepted work-related conditions.

On March 14, 2014 OWCP referred appellant for a second opinion evaluation with Dr. Stanley Askin, a Board-certified orthopedic surgeon.⁶ In a March 28, 2014 report, Dr. Askin

⁴ OWCP assigned File No. xxxxxx271 to this claim. It also paid appellant for health benefits adjustment for the period January 17 to September 25, 2010 on the supplemental rolls.

⁵ On April 3, 2009 OWCP combined OWCP File Nos. xxxxxx188 and xxxxxx271, with the latter as the master file.

⁶ OWCP provided a statement of accepted facts (SOAF) noting the accepted conditions for OWCP File Nos. xxxxxx188 and xxxxxx271 noting that the two claims had been combined with the latter serving as the master file number. It also advised that it had accepted two traumatic injury claims filed by appellant. Under OWCP File No. xxxxxx595, OWCP had accepted a back contusion and sacroiliac ligament sprain and under OWCP File No. xxxxxx404 it had accepted a back sprain under OWCP File No. xxxxxx404.

noted the history of injury and appellant's treatment, detailed the medical evidence he reviewed, listed his findings on examination, and concluded that the accepted conditions were no longer active or causing any disability. He opined that she could work her date-of-injury position with no limitations.

Dr. Fried continued to submit reports opining that appellant continued to have residuals from the diagnosed conditions, which prevented her from returning to her regular job.

On August 21, 2014 OWCP referred appellant to Dr. Gregory S. Maslow, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Fried and Dr. Askin regarding the status of the accepted conditions and whether appellant continued to have any residuals or disability due to her accepted work conditions.

In a September 9, 2014 report, Dr. Maslow noted the history of injury, his review of the SOAF, and appellant's medical record. He then detailed his physical examination findings. Dr. Maslow reported full bilateral elbow and wrist range of motion, no olecranon or epicondylar tenderness, no bilateral tenderness at de Quervain's point, negative bilateral Finkelstein's test, normal skin color and temperature, pain on palpation over bilateral elbow ulnar nerve, and complaints of bilateral wrist numbness, negative bilateral wrist compression test, and intact upper extremity reflexes. He diagnosed right de Quervain's tenosynovitis due to appellant's work activities. However, Dr. Maslow concluded that the conditions had resolved based on the lack of any objective evidence of bilateral de Quervain's tenosynovitis. He noted that appellant had a variety of upper extremity complaints which he observed were unrelated to the accepted de Quervain's tenosynovitis and there was no definitive evidence supporting a diagnosis of brachial plexus abnormality. Next, Dr. Maslow explained that the clinical examination showed some evidence of radiculopathy or cervical radiculitis and possibly mild carpal tunnel syndrome, but that these conditions were unrelated to her work activities. He concluded that appellant was capable of working with restrictions and required no further medical treatment.

Dr. Fried continued to submit disability notes and reports opining that appellant continued to be totally disabled.

In an investigative report dated March 23, 2015, the employing establishment's Office of Inspector General noted that appellant had been under surveillance from December 11, 2014 through March 13, 2015 and noted its surveillance findings. It related that she was active, drove daily, and conducted errands. The report also noted that appellant was observed twisting in and out of vehicles, opening and closing vehicle doors, and lifting and carrying items.

On August 27, 2015 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits as she no longer had any residuals or continuing disability from the accepted work-related medical conditions. Special weight was accorded to Dr. Maslow's impartial medical opinion. Appellant was afforded 30 days to submit additional evidence or argument.

In response OWCP's proposal to terminate compensation benefits, counsel contended that Dr. Maslow's report lacked sufficient detail to establish resolution of the accepted conditions.

Subsequent to the notice of proposed termination, OWCP received additional reports from Dr. Fried in which he again opined that appellant was totally disabled due to her accepted work conditions.

On November 2, 2015 OWCP requested that Dr. Maslow review an attached surveillance digital video disc and SOAF dated May 9, 2014.⁷ It also requested that he provide supporting medical rationale for his conclusions.

In a November 2, 2015 report, Dr. Fried summarized appellant's examination findings and objective tests since first treating her in 2008 through December 11, 2014. He reviewed Dr. Maslow's September 9, 2014 report, noted his disagreement with Dr. Maslow's conclusion, and argued that the diagnostic and clinical evidence supported that appellant continued to suffer from the diagnosed conditions and was disabled from work.

In a November 25, 2015 supplemental report, Dr. Maslow reviewed the SOAF provided by OWCP and noted that left de Quervain's tenosynovitis was accepted under another claim. He reiterated that he found no objective evidence of bilateral de Quervain's tenosynovitis during his examination of appellant and that appellant had recovered from her accepted work conditions. Dr. Maslow indicated that his review of the video did not cause him to change his opinions.

Dr. Fried continued to submit reports and disability notes supporting appellant's continued disability and residuals from the appellant's accepted conditions.

By decision dated April 21, 2016, OWCP terminated appellant's wage-loss compensation and medical benefits, effective April 22, 2016. It found that Dr. Maslow's opinion was entitled to the special weight of the impartial medical examiner.

Subsequent to the April 21, 2016 decision terminating appellant's benefits, Dr. Fried resubmitted submitted disability notes, treatment notes, and reports, noting she continued disability due to her accepted work conditions. He also submitted new reports dated May 19 to September 1, 2016.

In a letter dated April 29, 2016, counsel requested an oral hearing before an OWCP hearing representative, which was held on September 27, 2016. He presented arguments in his letter and at the hearing that Dr. Maslow's opinion should not be considered the special weight of the evidence.

Dr. Fried reported in a September 1, 2016 narrative report that appellant had right shoulder and bilateral hand complaints. He noted that she had experienced additional symptoms recently due to a little bit of extra driving she had been doing and due to the weather. Dr. Fried noted appellant's examination findings and diagnosed a number of conditions. His diagnoses included: brachial plexopathy/cervical radiculopathy right, with long thoracic neuritis; brachial

⁷ By letter dated November 2, 2015, OWCP informed counsel that a copy of the surveillance video had been forwarded to Dr. Maslow. It noted that a copy of the video would be provided to appellant upon request. Counsel requested a copy of the video on November 13, 2015 and OWCP provided a copy of the video to him on November 23, 2015.

plexopathy/cervical radiculopathy left, with neurogenic tendinitis; bilateral de Quervain's tenosynovitis; scapholunate ligament, right wrist; radioulnar joint injury, left wrist; bilateral radial neuropathy of the wrists; bilateral radial neuritis of the wrists; bilateral carpal tunnel; and bilateral posterior occipital neuralgia. Dr. Fried concluded that appellant remained symptomatic and could not return to regular work activities.

By decision dated December 6, 2016, an OWCP hearing representative affirmed OWCP's April 29, 2106 decision, finding that appellant no longer had any disability or residuals due to the accepted work-related conditions.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.⁸ Once it has determined that, an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁹ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁰

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.¹¹ 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.¹²

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.¹³ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹⁴ When there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁵

⁸ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁹ *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

¹⁰ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

¹¹ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹² *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

¹³ 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

¹⁴ 20 C.F.R. § 10.321.

¹⁵ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained bilateral de Quervain's syndrome and bilateral carpal tunnel syndrome as a result of her federal employment duties in 2008. Appellant stopped work in June 2008 and was eventually retained on OWCP's periodic compensation rolls. OWCP terminated her wage-loss compensation and medical benefits, effective April 22, 2016, based on the reports of Dr. Maslow, the impartial medical specialist. By decision dated December 6, 2016, an OWCP hearing representative affirmed OWCP's April 22, 2016 termination decision.

OWCP properly referred appellant to Dr. Maslow for an impartial medical examination to resolve the conflict in medical opinion evidence, between Drs. Askin and Fried as to whether appellant had any continuing employment-related residuals or disability, pursuant to 5 U.S.C. § 8123(a).

The Board finds that OWCP met its burden of proof to terminate appellant's medical and wage-loss compensation benefits based on the September 9, 2014 and November 25, 2015 reports of Dr. Maslow, who accurately summarized her medical history, reviewed an updated SOAF, viewed surveillance video, and examined her finding no objective evidence to support ongoing employment-related residuals or disability due to the accepted conditions.

In his September 9, 2014 report, Dr. Maslow conducted a neurologic examination of the upper extremities, which was essentially normal with no findings of atrophy. He concurred with Dr. Askin's opinion that the bilateral carpal tunnel syndrome apparent on his examination was not work related. Dr. Maslow stated that appellant had not worked in many years and that there was no indication that the carpal tunnel syndrome would prohibit her return to her previous employment. He also related that there was also no evidence on examination that any of the other diagnoses were present or would interfere with return to the previous employment. Dr. Maslow opined that appellant was capable of returning to work full duty, full-time work without restrictions imposed by the previously accepted work-related diagnoses. A review of the surveillance tapes confirmed his opinions.

In his November 25, 2015 supplemental report, Dr. Maslow reiterated his opinion that there was no objective evidence of bilateral de Quervain's tenosynovitis and noted that he had reviewed the SOAF OWCP provided, which stated that left de Quervain's tenosynovitis had been accepted under another claim. He again concluded that the accepted work conditions had resolved without disability.

The Board finds that Dr. Maslow's opinion is well rationalized and based on a complete and accurate history, a complete SOAF, and the entire case record, including surveillance videos. Dr. Maslow examined appellant thoroughly, reviewed the medical records, and reported accurate medical and employment histories and reviewed the surveillance video of appellant. Thus, his opinion that the accepted conditions have resolved without residuals is entitled to special weight.¹⁶

¹⁶ See Bryan O. Crane, 56 ECAB 713 (2005).

The additional medical evidence submitted in response to Dr. Maslow's report is insufficient to overcome the special weight accorded to him as an impartial medical specialist regarding this issue. While Dr. Fried submitted a November 2, 2015 report arguing that appellant continued to suffer from the diagnosed conditions and was disabled from working and noting his disagreement with Dr. Maslow's opinion, he had been on one side of the conflict in medical opinion regarding whether there were any residuals of the employment-related conditions and whether they were disabling. Reports from a physician who was on one side of a medical conflict that an impartial medical specialist resolved, are generally insufficient to overcome the special weight accorded to the opinion of the impartial medical specialist or to create a new conflict.¹⁷

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

The Board finds that appellant has not established continuing disability or residuals after April 22, 2016 causally related to her accepted employment injuries.

Following OWCP's termination of appellant's wage-loss compensation and medical benefits, effective April 22, 2016, the burden of proof shifted to appellant to demonstrate that she continued to be disabled from work on and after that date due to her accepted employment conditions.²¹

Subsequent to the termination of her wage-loss compensation, effective April 22, 2016, appellant submitted reports from Dr. Fried which were previously of record as well as new progress notes dated May 19 to September 1, 2016. OWCP also received a narrative report from Dr. Fried dated September 1, 2016. In these reports, Dr. Fried found that appellant continued to have residuals of her accepted employment injuries and that she was unable to perform her regular work duties. He offered a conclusion, but no medical rationale explaining why she had continuing disability due to the accepted conditions. A medical opinion that states a conclusion,

¹⁷ *I.J.*, 59 ECAB 408 (2008); *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).

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 18.

but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.²²

Moreover, the Board has long held that reports from a physician who was on one side of a medical conflict that an impartial medical specialist resolved, are generally insufficient to overcome the special weight accorded to the report of the impartial medical specialist, or to create a new conflict.²³ The Board notes that as Dr. Fried was on one side of the conflict resolved by Dr. Maslow, Dr. Fried's additional reports and disability notes are of insufficient weight to overcome the special weight accorded to Dr. Maslow's pinion or to create a new medical conflict. The Board finds, therefore, that appellant has not established continuing disability or residuals after April 22, 2016 causally related to the accepted conditions.²⁴

The Board also notes that Dr. Fried diagnosed a number of additional conditions in his September 1, 2016 report. Dr. Fried however offered no opinion regarding the cause of these additional conditions. The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.²⁵ Therefore, this report from Dr. Fried does not establish appellant's claim for additional employment-related medical conditions.²⁶

Thus, the Board finds that appellant has not met her burden of proof to establish continuing residuals or disability after April 22, 2016 due to her accepted conditions. 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 April 22, 2016. The Board further finds that she has not met her burden of proof to establish any continuing disability or residuals after April 22, 2016.

²² See *E.H.*, Docket No. 17-0986 (issued August 10, 2017).

²³ *Id.*

²⁴ *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Dorothy Sidwell*, *supra* note 17.

²⁵ See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

²⁶ See *J.S.*, Docket No. 16-0472 (issued June 3, 2016).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 6, 2016 is affirmed.

Issued: January 17, 2018
Washington, DC

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

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

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