

ISSUES

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

FACTUAL HISTORY

On April 5, 2013 appellant, then a 42-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on March 29, 2013 she injured her left shoulder while lifting a 30-pound pan of food while in the performance of duty.³ She stopped work on April 5, 2013 and returned to a full-time light-duty job on April 11, 2013. OWCP initially accepted the claim for left shoulder and upper arm strain, and subsequently expanded acceptance of the claim to include neck sprain, and temporary aggravation of cervical intervertebral disc without myelopathy.⁴

On November 26, 2013 appellant filed an occupational disease claim (Form CA-2) alleging that muscle spasms in her neck were due to her employment duties. She first became aware of this condition on March 29, 2013, but did not realize the relationship to her work until October 22, 2013. Appellant stopped work on November 5, 2013. OWCP accepted the claim for aggravation of cervical radiculopathy/brachial neuritis and paid wage-loss compensation on the supplemental rolls beginning November 6, 2013.⁵

The record contains reports and disability notes from Dr. Pawan Rastogi, a treating Board-certified neurosurgeon. In reports dated throughout 2013 and 2014, Dr. Rastogi diagnosed cervical radiculopathy and found appellant totally disabled from work.

By letter dated March 19, 2014, OWCP informed appellant that it was combining OWCP File Nos. xxxxxx480 and xxxxxx290, with the latter file number designated as the master file.

On May 6, 2014 OWCP authorized Dr. Rastogi to perform left posterior C5-6, C6-7 foraminotomy. This procedure was performed on June 27, 2014.

On November 4, 2014 OWCP referred appellant for a second opinion evaluation with Dr. Robert Allen Smith, a Board-certified orthopedic surgeon, for an opinion regarding the status of appellant's work-related conditions and work capacity.

In a November 24, 2014 report, Dr. Smith reviewed a statement of accepted facts (SOAF), and the medical evidence of record. He noted an aggravation of cervical radiculopathy as the accepted work injury. A physical examination revealed satisfactory cervical range of

³ The record reflects that appellant had a prior December 14, 2012 traumatic injury claim under OWCP File No. xxxxxx564 which was accepted for cervical strain. This claim has not been combined with the current claim.

⁴ OWCP assigned File No. xxxxxx480.

⁵ OWCP assigned File No. xxxxxx290.

motion without rigidity or spasms, normal left upper extremity findings, and objectively normal neurological examination. Dr. Smith noted that he was unable to answer questions posed by OWCP because medical reports that appellant mentioned during her evaluation had not been provided for his review.

In a February 25, 2015 supplemental report, Dr. Smith reviewed additional medical records, appellant's job description, and three SOAFs. He opined that appellant's accepted left shoulder sprain and aggravation of cervical radiculopathy had resolved, with the cervical radiculopathy aggravation addressed by the June 2014 decompression surgery. Dr. Smith further concluded that appellant was capable of returning to full-duty work with no restrictions based on her benign clinical examination and lack of any discernible ongoing objective residuals.

On June 9, 2015 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits based on Dr. Smith's February 25, 2015 report.

In response to OWCP's notice of proposed termination appellant submitted a June 27, 2014 anesthesia record from her left C5-6, C6-7 posterior cervical foraminotomy surgery.

By decision dated July 15, 2015, OWCP finalized the termination of appellant's compensation benefits effective that day. It found the weight of the medical opinion evidence rested with OWCP's referral physician, Dr. Smith, who concluded that appellant had no residuals or disability due to her accepted conditions.

In a letter dated July 23, 2015, appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held on March 17, 2016.

In an April 12, 2016 report, Dr. Rastogi noted treating appellant for cervical radiculopathy from December 14, 2012 and March 29, 2013 injuries. He reported that appellant underwent C5-6, C6-7 posterior decompression with foraminotomy surgery on June 27, 2014. Following surgery, Dr. Rastogi noted that appellant continued to have significant neck pain radiating into her left arm. He suspected appellant had chronic nerve damage from her work injuries and concluded that she was disabled from any gainful employment. Lastly, Dr. Rastogi noted a functional capacity evaluation (FCE) had been conducted which found appellant was capable of working two hours per day in a sedentary position. However, he did not agree that she was capable of working a sedentary job for two hours per day.

By decision dated May 26, 2016, an OWCP hearing representative reversed the July 15, 2016 termination decision. He found Dr. Smith's opinion was insufficiently rationalized to meet OWCP's burden of proof to terminate.

On June 14, 2016 OWCP referred appellant, along with an updated SOAF, for a reevaluation with Dr. Smith.

In a June 27, 2016 report, Dr. Smith, based upon a review of the medical evidence, updated SOAF, and physical examination, concluded that appellant had no residuals or disability due to the accepted March 29, 2013 employment injury. He reported appellant's history of injury and summarized medical treatment provided. Dr. Smith noted appellant's belief that she was totally disabled and listed her complaints. A physical examination revealed no cervical

muscle atrophy, spasm, deformity or trigger points and normal neurological examination. Based on examination findings, Dr. Smith diagnosed prior cervical anterior discectomy and fusion and posterior foraminotomies. He noted that apparently OWCP had accepted appellant's claim for brachial neuritis or radiculitis and opined that, if the "condition ever existed," that it had resolved by August 13, 2013 based on normal diagnostic testing. Dr. Smith further opined that any medical treatment provided subsequent to August 13, 2013 was unrelated to the accepted conditions and medically unnecessary. He opined that appellant's subjective complaints were unsupported by any objective findings correlating to the accepted March 29, 2013 work injury. Lastly, Dr. Smith found appellant had reached maximum medical improvement on August 13, 2013 and required no further treatment. He further found that appellant could return to her usual job with no restrictions.

On July 27, 2016 OWCP issued a notice proposing to terminate appellant's compensation benefits based on Dr. Smith's June 27, 2016 report.

By decision dated September 1, 2016, OWCP finalized the termination of appellant's compensation benefits effective that day. It found Dr. Smith's June 27, 2016 report constituted the weight of the medical opinion evidence.

In a letter dated September 7, 2016, appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held on April 12, 2017.

By decision dated May 15, 2017, an OWCP hearing representative affirmed the September 27, 2016 decision terminating appellant's compensation benefits. She further found that appellant failed to meet her burden of proof to establish any continuing disability or residuals on and after September 1, 2016.

On June 5, 2017 appellant, through counsel, requested reconsideration. In support of this request, OWCP received a May 9, 2017 report from Dr. Rastogi. Dr. Rastogi related that he had last examined appellant on April 25, 2017. He opined that appellant could return to work in a position that did not require repetitive work with her arms above her shoulders and flexion/extension/rotation of her neck, to accommodate her cervical radiculopathy. Dr. Rastogi also related that due to her lumbar radiculopathy she should observe weight lifting limits and bending/stooping/twisting of her back.

By decision dated August 31, 2017, OWCP denied modification.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden to justify modification or termination of an employee's benefits.⁶ After it has determined that an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to

⁶ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

the employment.⁷ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁹ 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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP did not meet its burden of proof to terminate appellant's compensation benefits effective September 1, 2016.

OWCP accepted the conditions of left shoulder and upper arm strain, neck sprain, and temporary aggravation of cervical intervertebral disc without myelopathy under OWCP File No. xxxxxx480 and aggravation of cervical radiculopathy under OWCP File No. xxxxxx290. It terminated appellant's wage-loss compensation and medical benefits, effective September 1, 2016 finding the weight of the medical evidence established that she no longer had any residuals or continuing disability from work stemming from her employment-related injuries. In evaluating the medical evidence, OWCP determined that the weight of the medical evidence rested with the second opinion physician, Dr. Smith.

In November 2014, appellant was referred to Dr. Smith for a second opinion examination. In a November 24, 2014 report, Dr. Smith noted her history of injury and that the accepted condition was aggravation of cervical radiculopathy. He indicated that he was unable to answer OWCP's questions as appellant referenced medical evidence that had not been provided for review. Dr. Smith, in a February 25, 2015 supplemental review, concluded that appellant's accepted left shoulder sprain and cervical radiculopathy had resolved. He further opined that appellant no longer had any residuals or disability due to the accepted work injuries and was capable of returning to full-duty work with no restrictions.

OWCP again referred appellant for a second opinion evaluation with Dr. Smith on June 14, 2016 following a May 26, 2016 hearing representative's decision which found Dr. Smith's opinion insufficiently rationalized to support termination. In a June 27, 2016 report, Dr. Smith again concluded that appellant had no disability or residuals due to the accepted March 29, 2013 employment injury. He reviewed the updated SOAF, responded to questions posed by OWCP, noted appellant's complaints and belief that she was totally disabled, and summarized the medical records reviewed. Dr. Smith noted that OWCP had apparently accepted brachial neuritis or radiculitis and questioned whether the "condition ever existed," but opined that it had resolved by August 13, 2013 based on normal diagnostic testing. He further

⁷ *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁸ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁹ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹⁰ *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

concluded that medical treatment provided subsequent to August 13, 2013 was medically unnecessary and unrelated to the accepted conditions, he questioned whether appellant's cervical foraminotomy procedure performed in July 2014 had been authorized by OWCP. The basis for his opinion was that appellant's subjective complaints were unsupported by any objective findings correlating to the accepted March 29, 2013 work injury. Dr. Smith also found appellant had reached maximum medical improvement on August 13, 2013, required no further treatment, and could return to full-duty work without any work restrictions.

The Board finds, however, that Dr. Smith's reports are conclusory in nature and lacking sufficient medical rationale, and, therefore, contain insufficient rationale to support termination of wage-loss compensation and medical benefits.¹¹ While OWCP had authorized appellant's cervical decompression foraminotomy surgery on June 27, 2014, Dr. Smith concluded that appellant had not required further medical treatment after August 13, 2013.

Dr. Smith had been specifically instructed to provide "detailed reasoning" for his medical conclusion that appellant's accepted conditions had resolved without any residuals or disability, but his response lacked sufficient reasoning supporting his conclusion.¹² He relied on interpretation of diagnostic tests performed in 2013 to support his conclusion. Because Dr. Smith's second opinion report failed to provide medical rationale in support of his findings, his opinion is of diminished probative value and is insufficient for OWCP to meet its burden of proof to justify the termination of ongoing wage-loss compensation and medical benefits.

The Board, therefore, finds that OWCP erred in terminating appellant's wage-loss compensation and medical benefits effective September 1, 2016 based on Dr. Smith's second opinion report. The Board will reverse OWCP's determination terminating her wage-loss compensation and medical benefits.¹³

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's compensation benefits effective September 1, 2016.

¹¹ See *C.L.*, Docket No. 14-1585 (issued December 16, 2014); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹² *A.R.*, Docket No. 12-0443 (issued October 9, 2012); see also *P.F.*, Docket No. 13-0728 (issued September 9, 2014); *T.M.*, Docket No. 08-0975 (issued February 6, 2009) (a medical report consisting solely of conclusory statements without supporting rationale is of little probative value).

¹³ In light of the Board's disposition regarding Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 31, 2017 is reversed.

Issued: May 24, 2018
Washington, DC

Christopher J. Godfrey, 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