United States Department of Labor
Employees' Compensation Appeals Board

A.G., Appellant	)	
	)	**Docket No. 18-0749**
and	)	**Issued: November 7, 2018**
	)	
DEPARTMENT OF COMMERCE, U.S. CENSUS BUREAU, Long Beach, CA, Employer	)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 22, 2018 appellant filed a timely appeal from a January 25, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 25, 2017; and (2) whether appellant has met his burden of proof to establish continuing residuals or disability after June 25, 2017.

FACTUAL HISTORY

On January 11, 2011 appellant, then a 50-year-old field representative, filed a traumatic injury claim (Form CA-1) alleging that, on January 12, 2010, he injured his left hand, wrist, thumb,

[1] 5 U.S.C. § 8101 *et seq.*

and index finger repetitively when typing on, operating, and lifting a laptop computer at work. OWCP assigned the claim OWCP File No. xxxxxx387. It accepted the claim for synovitis of the left thumb on April 25, 2011. Appellant subsequently advised OWCP that he intended to file an occupational disease claim because of the repetitive activities involving his left hand and wrist.

On December 15, 2011 appellant filed an occupational disease claim (Form CA-2) alleging that he developed right wrist pain due to his federal employment duties, including using his laptop while interviewing clients and lifting his laptop. He stopped work on January 6, 2012. OWCP assigned that claim OWCP File No. xxxxxx134 and accepted it for right carpal tunnel syndrome on January 12, 2012.[2] It paid appellant intermittent wage-loss compensation and medical benefits on the supplemental roll as of January 17, 2012 and on the periodic rolls as of July 1, 2012.

On October 17, 2012 Dr. Keith S. Feder, a Board-certified orthopedic surgeon, examined appellant due to his accepted hand and wrist conditions as well as cervical spine and left shoulder pain which appellant attributed to repetitive typing and driving. On December 12, 2012 he opined that appellant was nearing a return to work.

Appellant returned to part-time light-duty work in March 2013, but continued to claim intermittent periods of total disability. On August 7, 2014 OWCP referred appellant, a statement of accepted facts (SOAF), and a list of questions for a second opinion evaluation with Dr. Richard Rogachefsky, a Board-certified orthopedic surgeon.

In September 8 and November 12, 2014 reports, Dr. Rogachefsky found that appellant was totally disabled from work due to his accepted carpal tunnel syndrome and de Quervain's tenosynovitis. He also reviewed appellant's November 3, 2014 electrodiagnostic studies which indicated mild right median nerve sensory neuropathy. As of December 16, 2014 OWCP again paid appellant wage-loss compensation benefits on the periodic rolls.[3]

In a report dated October 12, 2015, Dr. Feder opined that appellant was totally disabled from work due to his accepted employment-related injuries. He found that appellant was permanent and stationary as of October 12, 2015. Dr. Feder reported normal range of motion of appellant's hands and wrists with negative Tinel's sign and Phalen's test bilaterally. He found a positive Finkelstein's test on the left with mild pain and weakness on manual muscle strength testing bilaterally. Dr. Feder reported mild left thumb joint tenderness. He diagnosed Finkelstein's syndrome of the left wrist and mild carpal tunnel syndrome by electrodiagnostic testing. Dr. Feder determined that appellant had reached maximum medical improvement. In regard to appellant's cervical spine and left shoulder subjective complaints, he did not provide an opinion on whether these conditions were related to appellant's employment, but requested a second opinion evaluation. Dr. Feder provided work restrictions including no bilateral repetitive upper extremity tasks, no repetitive typing or writing, and no lifting, pushing, pulling, or carrying more than 10

[2] On June 25, 2012 OWCP administratively combined OWCP File No. xxxxxx134 and File No. xxxxxx387, with OWCP File No. xxxxxx134 serving as the master file.

[3] In December 2013, appellant was diagnosed with nonemployment-related cancer. His oncologist found him totally disabled due to this condition and resulting surgery until August 2015. On June 23, 2016 appellant began a second course of radiation therapy which rendered him totally disabled during the duration of this treatment and for the following six months.

pounds. He determined that appellant should have access to medical care for his right carpal tunnel syndrome.

On November 10, 2016 OWCP referred appellant, a SOAF, and a list of questions for a second opinion examination by Dr. Michael J. Einbund, a Board-certified orthopedic surgeon. In a report dated November 29, 2016, Dr. Einbund reviewed the SOAF and appellant's medical history, including his accepted conditions of right carpal tunnel syndrome and synovitis of the left thumb. He also noted appellant's report of neck pain radiating into his left shoulder. Dr. Einbund found that appellant's bilateral wrists and hands revealed dorsal tenderness with full range of motion, normal sensation, and normal motor strength. He demonstrated tenderness throughout the dorsum of his left thumb with full range of motion and negative clinical testing. Dr. Einbund reviewed appellant's diagnostic testing and noted that he reported discomfort and stiffness in his right wrist and that his electrodiagnostic studies from November 3, 2014 revealed mild right median neuropathy across the right wrist. He further noted that appellant reported pain and stiffness in his left thumb, wrist, and index finger, but that there were no objective findings or test results. Dr. Einbund concluded that appellant's accepted work-related conditions were no longer active as his right carpal tunnel syndrome as demonstrated on electrodiagnostic studies did not include motor involvement, decreased sensation, or positive Phalen's test and Tinel's sign. Appellant also failed to report paresthesia. In regard to appellant's left thumb, Dr. Einbund negated any active left thumb synovitis. He opined that any inflammatory process caused by his work duties "would have surely resolved having no industrial exposure since April 2014." Dr. Einbund further noted that there were no objective findings on clinical examination. He concluded that appellant did not require further medical treatment or work restrictions. Dr. Einbund found no physical limitations from an orthopedic standpoint.

On February 2, 2017 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits as a result of his accepted conditions of synovitis of the left thumb and right carpal tunnel syndrome. It afforded him 30 days to respond.

Appellant responded on February 17, 2017 and asserted that Dr. Einbund's examination was incomplete as he did not find that appellant's left shoulder and cervical spine conditions were work related. He also noted that he continued to experience discomfort in this left thumb and wrist which he attributed to his work activities of repetitive typing, lifting, and excessive walking. Appellant asserted that he was unable to return to work due to his nonemployment-related condition of cancer.

By decision dated June 8, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits, effective June 25, 2017.[4] On July 5, 2017 appellant requested an oral hearing before an OWCP hearing representative.

In a report dated June 23, 2017, Dr. Feder found normal range of motion with negative clinical testing of the bilateral wrists. He reported a positive Finkelstein's test for de Quervain's tenosynovitis on the left. Dr. Feder found mild pain and weakness on manual muscle strength testing bilaterally and mild left thumb joint tenderness. He reviewed Dr. Einbund's report and found that appellant continued to experience left wrist de Quervain's syndrome, and chronic right carpal tunnel syndrome.

Appellant testified during the oral hearing on December 5, 2017. He requested an additional second opinion examination to verify that his neck and spine injuries were work related.

By decision dated January 25, 2018, OWCP's hearing representative affirmed OWCP's June 8, 2017 decision. He found that Dr. Einbund's opinion was entitled to the weight of the medical evidence and was sufficient to establish that appellant's work-related disability and medical residuals had resolved.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it bears the burden of proof to justify termination or modification of benefits.[5] OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[6] Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[7] The right to medical benefits for an accepted

[4] Beginning in July 2011, appellant reported neck pain and left shoulder pain which he attributed to his repetitive work duties. Dr. Frank Giacobetti, a Board-certified orthopedic surgeon, opined on July 28, 2011 that these conditions were work related. On October 17, 2012 Dr. Feder examined appellant due to his accepted hand and wrist conditions as well as cervical spine and left shoulder pain which appellant attributed to repetitive typing and driving. He diagnosed left trapezius muscle strain and attributed this condition to appellant's work. Dr. Feder opined that appellant's additional diagnosed conditions of cervical spine myofasciitis, left shoulder cumulative trauma injury, impingement, left shoulder, rotator cuff tendinitis left shoulder, and acromioclavicular (AC) joint arthropathy, left shoulder were "more than likely" due to cumulative trauma. On November 21, 2012 he recommended a magnetic resonance imaging (MRI) scan of the cervical spine. Appellant underwent a cervical spine MRI scan on December 11, 2012 which demonstrated multilevel degenerative disc disease. On December 12, 2012 Dr. Feder reviewed appellant's cervical MRI scan and found that appellant was approaching a return to work. OWCP noted in its June 8, 2017 termination decision that appellant's occupational disease claim in OWCP File No. xxxxxx453 for left neck, shoulder, and wrist conditions was denied by decision dated December 31, 2013.

[5] *See A.C.*, Docket No. 16-1670 (issued April 6, 2018); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

[6] *See R.P., supra* note 5; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

[7] *See R.P., supra* note 5; *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

condition is not limited to the period of entitlement for disability compensation.[8] 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.[9]

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 25, 2017.

In his November 29, 2016 narrative report, Dr. Einbund, OWCP's second opinion medical specialist, detailed appellant's factual and medical history and reported findings on physical examination. He opined that there was no evidence of ongoing disability or medical residuals from the accepted conditions of right carpal tunnel syndrome and left thumb synovitis. Dr. Einbund found that appellant's bilateral wrists and hands revealed dorsal tenderness with full range of motion, normal sensation, and normal motor strength. He demonstrated tenderness throughout the dorsum of his left thumb with full range of motion and negative clinical testing. Dr. Einbund reviewed appellant's electrodiagnostic studies from November 3, 2014 which revealed mild right median neuropathy across the right wrist. He concluded that appellant's accepted work-related conditions were no longer active as his right carpal tunnel syndrome did not include motor involvement, decreased sensation, or positive Phalen's test and Tinel's sign. Appellant also failed to report paresthesia. In regard to appellant's left thumb, Dr. Einbund negated any active left thumb synovitis. He opined that any inflammatory process caused by his work duties "would have surely resolved having no industrial exposure since April 2014." Dr. Einbund further noted that there were no objective findings on clinical examination. He concluded that appellant did not require further medical treatment or work restrictions. Dr. Einbund found no physical limitations from an orthopedic standpoint.

The Board finds that Dr. Einbund's opinion represents the weight of the medical evidence in this case. Dr. Einbund provided a detailed medical report reviewing the medical records and evidence of record. He unequivocally opined that appellant did not have continuing residuals of any employment-related condition and provided a medical explanation supported by objective findings.[10] Furthermore, Dr. Einbund's opinion was based on an accurate background.[11]

Appellant's attending physician, Dr. Feder, opined that appellant had residuals and disability from his work injury in his October 12, 2015 narrative report. However, he failed to provide a well-rationalized opinion with supporting objective evidence. Dr. Feder reported

[8] *See R.P., supra* note 5; *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009). *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[9] *See R.P., supra* note 5; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id*.

[10] *A.C., supra* note 5.

[11] *Id., See Michael S. Mina*, 57 ECAB 379 (2006) (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 analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

negative clinical testing of the bilateral wrists for carpal tunnel syndrome, but a positive Finkelstein's test for de Quervain's tenosynovitis in the left wrist, but did not address the accepted left thumb synovitis. He found that appellant continued to experience Finkelstein's syndrome left wrist and mild carpal tunnel syndrome by electrodiagnostic testing. However, Dr. Feder failed to provide a well-rationalized opinion which addressed how and why appellant's accepted conditions of right carpal tunnel syndrome and left thumb synovitis continued to be present given the limited objective physical findings and why and how these conditions continued to be work related despite his last work exposure in 2014.

The Board has long held that medical opinions not containing rationale on causal relationship are of diminished probative value and are generally insufficient to meet appellant's burden of proof.[12] Dr. Feder did not provide objective physical findings of the accepted work-related conditions nor did he support his finding of continued work-related residuals and disability with medical reasoning. For these reasons, his opinion is insufficiently rationalized to support that appellant has a residual or disability resulting from his accepted conditions sufficient to create a conflict with Dr. Einbund's opinion. The Board finds that the medical evidence of record was sufficient for OWCP to meet its burden of proof in this case. Dr. Einbund provided a well-rationalized opinion that represents the weight of the medical evidence.[13]

LEGAL PRECEDENT -- ISSUE 2

Once OWCP meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to the claimant to establish that he or she has continuing residuals or disability causally related to the accepted employment injury.[14] To establish causal relationship between the disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, establishing such causal relationship.[15]

It is well established that OWCP must review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision.[16] As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim, which was properly submitted to OWCP prior to the time of issuance of its final decision, be addressed by OWCP.[17]

[12] *A.C., supra* note 5.

[13] *Id.*

[14] *Id.; George Servetas*, 43 ECAB 424, 430 (1992).

[15] *A.C., supra* note 5.

[16] *Id.; William A. Couch,* 41 ECAB 548 (1990).

[17] *Id.*

ANALYSIS -- ISSUE 2

Subsequent to OWCP's termination decision appellant submitted additional medical evidence from his attending physician, Dr. Feder. In his June 23, 2017 report, Dr. Feder maintained that appellant continued to suffer from residuals of his employment-related right carpal tunnel syndrome as well as left wrist synovitis. Although appellant submitted this report prior to the issuance of the January 25, 2018 decision, there is no evidence that the hearing representative reviewed it.

As OWCP's hearing representative did not review all the evidence of record prior to issuing his January 25, 2018 decision, the Board finds that the case is not in posture for decision with regard to whether appellant met his burden of proof to establish continuing residuals or disability causally related to the accepted employment injuries. For this reason, the case will be remanded to OWCP to enable it to properly consider all the evidence submitted at the time of the January 25, 2018 decision. Following such further development as OWCP deems necessary, it shall issue a *de novo* decision on the issue of continuing employment-related disability or residuals.[18]

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 25, 2017. The Board further finds that this case is not in posture for decision as to whether he has met his burden of proof to establish continuing disability or residuals causally related to the accepted employment injuries.

[18] *A.C., supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2018 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 7, 2018
Washington, DC

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

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

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