

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 21, 1993 appellant, then a 33-year-old ultrasound technician, filed a traumatic injury claim (Form CA-1) alleging that, on January 20, 1993, she injured her right shoulder, and her thoracic and cervical spine while transferring a patient from his bed to a wheelchair. By decision dated February 11, 1993, OWCP accepted her claim for right shoulder strain, cervical radiculitis, and lumbar sprain.

Appellant filed a notice of recurrence of disability (Form CA-2a) on July 5, 1994 alleging that she sustained a recurrence of low back pain, leg pain, and neck pain causally related to her January 20, 1993 employment injury on March 8, 1994. She stopped work on April 3, 1994. Appellant returned to work and filed a second notice of recurrence on July 19, 1994. OWCP accepted her recurrences of disability on July 17, 1995 and she received wage-loss compensation for all periods of temporary total disability.

The employing establishment provided appellant with a job offer in November 1996. Appellant declined the job offer on November 6, 1996, claiming that she was totally disabled from work. In a letter dated January 9, 1997, OWCP informed her that the job offered by the employing establishment was suitable work under 5 U.S.C. § 8106(c), informed her of the consequences of this penalty provision, and afforded her 30 days to accept the position or provide her reasons for refusal. By decision dated March 11, 1997, it terminated appellant's wage-loss compensation and entitlement to schedule award benefits.

Appellant appealed the March 11, 1997 decision to the Board. In its April 22, 1999 decision,³ the Board reversed the March 11, 1997 OWCP decision, finding that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and entitlement to schedule award benefits, effective March 11, 1997. Following the Board's April 22, 1999 decision, OWCP reentered appellant on the periodic rolls, effective March 30, 1997.

On August 12, 1999 appellant underwent electromyogram (EMG) and nerve conduction velocity (NCV) studies which demonstrated chronic left C6, right L3-4, and right L5-S1 radiculopathy. Beginning on August 30, 1999 and continuing through March 25, 2008, appellant's attending physician, Dr. Richard A. Pearl, a neurologist, provided a series of medical reports diagnosing chronic cervical and lumbosacral radiculitis and radiculopathy as well as chronic cervical and lumbosacral sprains due to her accepted January 20, 1993 employment injury. He opined that appellant was totally disabled and that appellant's June 18, 2001 magnetic resonance imaging (MRI) scan was unremarkable.

² Docket No. 97-1711 (issued April 22, 1999).

³ *Id.*

On April 27, 2009 and continuing through December 10, 2013, Dr. Pearl repeated his diagnoses of cervical and lumbosacral radiculopathy and his finding of total disability. He described appellant's January 20, 1993 employment injury and her ongoing conditions of chronic cervical and lumbosacral radiculopathy. Dr. Pearl opined that appellant was totally disabled from work and noted that she could potentially become worse and develop a degenerative condition of the spine.

In a letter dated December 27, 2013, OWCP referred appellant, a SOAF, and list of questions, for a second opinion evaluation with Dr. Leon Sultan, a Board-certified orthopedic surgeon to determine the status of appellant's accepted conditions and disability. In his January 14, 2014 report, Dr. Sultan reviewed the SOAF and discussed appellant's history of injury. He performed a physical examination and found that appellant had no findings on physical examination in her cervical spine, right shoulder, or lumbar spine. Dr. Sultan concluded that appellant had no objective work-related disability. He completed a work restriction evaluation (Form OWCP-5) and found that appellant could work eight hours a day without restrictions.

On June 17, 2014 Dr. Pearl completed a narrative report and found that appellant had normal motor examination, gait, and sensory examination. He found pain on palpation of the paraspinal muscles in the cervical lumbosacral region. Dr. Pearl noted that a cervical spine MRI scan demonstrated a herniated disc at C5-6 and a bulging disc at C4-5. He diagnosed chronic cervical and lumbosacral radiculopathy. Dr. Pearl opined that appellant's condition was causally related to her accepted employment injury and found that she was totally disabled. He continued to support these diagnoses from September 2014 through July 1, 2015.

On August 5, 2014 OWCP found a conflict of medical opinion evidence between Dr. Pearl and Dr. Sultan regarding appellant's ongoing conditions and disability. In a letter of even date, it referred appellant, a SOAF, and a list of questions for an impartial medical examination with Dr. Richard Parker, a Board-certified orthopedic surgeon.

In a letter dated July 28, 2015, the employing establishment noted that appellant was scheduled for an impartial medical examination on August 20, 2014, but that there was no evidence in the file that this examination was ever performed. On November 5, 2015 OWCP responded to the employing establishment and alleged, "Due to a computer error the appointment has not been scheduled." However, the report of Dr. Parker's independent medical August 20, 2014 examination was not received by OWCP until approximately one year later, on November 10, 2015.

In that report dated August 20, 2014, Dr. Parker described appellant's history of injury, reviewed her medical records and diagnostic studies, and also performed a physical examination. He diagnosed chronic cervical and lumbar derangement and myofascial strain, as well as disc herniations in the cervical and lumbar spine. Dr. Parker opined that appellant could return to light duty with no lifting, pushing, or pulling in excess of 15 pounds. He concluded that appellant could perform a sedentary job if given the opportunity to get up every 30 minutes for 5 minutes to walk and stretch. Dr. Parker opined that there was a direct causal relationship between appellant's cervical and lumbar spine conditions and the January 20, 1993 employment injury.

OWCP prepared a new SOAF on December 7, 2015. On December 9, 2015 it referred appellant, the December 7, 2015 SOAF, and a list of questions for an additional second opinion evaluation examination with Dr. Sultan. In the December 7, 2015 SOAF, OWCP indicated that appellant was “under the care of” Dr. Pearl and of Dr. Parker, who was not identified as an IME. It listed appellant’s other second opinion examinations separately.

In his January 15, 2016 report, Dr. Sultan noted reviewing additional reports from Dr. Pearl and Dr. Parker’s August 20, 2014 “independent orthopedic examination.” He further noted that in his prior examination on January 14, 2014 he found normal physical findings with respect to her cervical and thoracolumbar spine as well as her right shoulder. Dr. Sultan performed an additional physical examination and found no muscle spasm in appellant’s neck or back, no trigger points, and symmetrical reflexes with normal sensory testing. With regard to appellant’s right shoulder, he noted that range of motion was equal with the left and that impingement signs were negative. Dr. Sultan concluded that appellant’s accepted conditions had resolved and that appellant had no ongoing orthopedic impairments due to these conditions requiring medical treatment. He further found no ongoing disability due to the January 20, 1993 employment injury. Dr. Sultan also found that appellant could return to her date-of-injury position without residuals.

Dr. Pearl, on May 3, 2016, opined that appellant had loss of range of motion of the cervical and lumbar spine as well as pain on palpation of the paraspinal muscles. He diagnosed cervical and lumbosacral radiculopathy and opined that these conditions were causally related to her employment injury. Dr. Pearl found that appellant could not return to work in her date-of-injury position.

In a May 6, 2016 note, the employing establishment offered to return appellant to her date-of-injury position. On May 18, 2016 Dr. Pearl opined that based on his correlation of appellant’s history, physical, and abnormal laboratory data, she was unable to return to work. He diagnosed the additional condition of chronic pain syndrome and found that appellant was totally disabled.

OWCP, on May 31, 2016, found a conflict of medical opinion evidence between Drs. Pearl and Sultan on the issue of whether appellant had any continuing disability or medical residuals as a result of her accepted employment injuries. In a letter dated July 1, 2016, it referred appellant, the December 7, 2015 SOAF, and a list of questions for an additional impartial medical examination with Dr. Bradley White, a Board-certified orthopedic surgeon.

Dr. White completed a report on August 22, 2016 reviewing appellant’s history of injury and medical history.⁴ He performed a physical examination and found no tenderness of the cervical spine, no limitation of cervical motion, and only mild discomfort at extremes of lateral bending, extension, and rotation. Appellant presented a normal neurological examination of the upper extremities with symmetrical reflexes and no clinical evidence of cervical radiculopathy. Appellant’s shoulders did not demonstrate muscle wasting, swelling, or deformity. Dr. White found no clinical signs of impingement or instability in either shoulder. In regard to appellant’s thoracic and lumbosacral spines, he found full range of motion with mild discomfort at the extremes of extension and lateral bending. Dr. White’s neurological examination of appellant’s

⁴ Dr. White did not mention Dr. Parker’s impartial medical examination, but referred to appellant’s second opinion evaluations as “orthopedic IME report[s].”

lower extremities was normal with no lower extremity radicular signs or symptoms. He noted that he agreed with Dr. Sultan and found that appellant's accepted conditions had resolved. Dr. White opined that there was no indication for further medical treatment due to these conditions. He concluded that there was no evidence of any ongoing causally-related disability and found that appellant should be able to return full time to her date-of-injury position, and again noted that he agreed with Dr. Sultan. However, Dr. White added, "The only modification that I would suggest in her work environment would be in her reliance in available hospital staff charged with the job of transferring patients and seek their assistance in patient transfers." He completed the work capacity evaluation (OWCP-5) and indicated that appellant could perform her usual job without restriction for eight hours a day.

In a letter dated September 27, 2016, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. White's August 22, 2016 report. It afforded appellant 30 days for a response if she disagreed with the proposed termination.

Dr. Pearl completed a report on October 6, 2016 and disagreed with Dr. White's findings and conclusions. He noted that appellant had pain in her neck and back to her extremities and found Dr. White's range of motion determinations to be inconsistent with his findings. Dr. Pearl noted that Dr. White recommended work modification and home exercises. He further opined that appellant's accepted conditions should include chronic pain syndrome which neither Dr. Sultan nor Dr. White addressed. Dr. Pearl continued to submit treatment notes from October 6, 2016 through January 31, 2017 diagnosing cervical radiculitis and lumbosacral radiculopathy.

By decision dated March 21, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits, effective March 20, 2017. It found that Dr. White was entitled to the special weight of the medical evidence and established that appellant had no ongoing disability or medical residuals.

In a letter dated March 30, 2017, appellant disagreed with OWCP's March 21, 2017 termination decision and asserted that she remained totally disabled. She requested reconsideration on April 4, 2017 and submitted a report from Dr. Pearl dated March 29, 2017 in which he opined that appellant was totally disabled due to loss of range of motion of the cervical spine as well as pain on palpation of the paraspinal muscles in the cervical and lumbosacral spine. Dr. Pearl found that appellant had ongoing neurological complaints and objective evidence of progressive cervical spine disease as well as chronic pain syndrome with depressive elements. Appellant also submitted treatment notes from Dr. Pearl dated March 29, and May 31, 2017.

By decision dated July 6, 2017, OWCP denied modification of its March 21, 2017 termination decision and found that appellant had not established continuing disability and medical residuals on or after that date.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁵ 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 the employment.⁶ OWCP's 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 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

Section 8123(a) of FECA which provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.¹⁰ 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.¹¹ When there exists opposing 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.¹²

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 20, 2017.

⁵ See *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.*, *id.*; *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).

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 5 U.S.C. § 8123(a); see *R.P.*, *supra* note 5; *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009); *M.S.*, 58 ECAB 328 (2007).

¹¹ 20 C.F.R. § 10.321; *R.C.*, 58 ECAB 238 (2006).

¹² See *R.P.*, *supra* note 5; *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

OWCP accepted that appellant sustained right shoulder strain, cervical radiculitis, and lumbar sprain due to her January 20, 1993 employment injury. It properly determined that a conflict arose between Dr. Pearl, appellant's attending physician, who found that she was totally disabled from work due to medical residuals of her accepted condition, and Dr. Sultan, an OWCP second opinion physician, who found that she had no disability or medical residuals due to her accepted employment injuries. On July 1, 2016 OWCP referred appellant to Dr. White for an impartial medical examination. By decision dated March 20, 2017, it terminated appellant's wage-loss compensation and medical benefits, effective March 20, 2017 based on the special weight accorded Dr. White's opinion as the impartial medical examiner.

Where there exist 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.¹³ The Board finds that the opinion of Dr. White, a Board-certified orthopedic surgeon, selected to resolve the conflict in opinion is based on a proper factual¹⁴ and medical background and is well rationalized. Dr. White accurately summarized the relevant medical evidence, provided detailed findings on examination, and reached conclusions about appellant's condition which comported with his findings.¹⁵ He found appellant had a normal neurological examination of the upper extremities with symmetrical reflexes and no clinical evidence of cervical radiculopathy. Dr. White found no clinical signs of impingement or instability in either shoulder. His neurological examination of appellant's lower extremities was also normal with no lower extremity radicular signs or symptoms. Dr. White found that appellant's accepted conditions had resolved. He provided rationale for his opinion by noting that appellant had no further objective findings of her accepted conditions. As his report is detailed, well-rationalized, and based on proper factual background, his opinion is entitled to the special weight accorded an IME.¹⁶

The remaining evidence submitted prior to OWCP's termination of appellant's compensation is insufficient to show that she had disability or residuals of her accepted work injury. Dr. Pearl completed a report on October 6, 2016 and disagreed with Dr. White's findings and conclusions. He further opined that appellant's accepted conditions should include chronic pain syndrome and continued to diagnose cervical radiculitis and lumbosacral radiculopathy. Dr. Pearl did not, however, provide a rationalized explanation regarding the medical findings and reasoning for his opinion. Furthermore, as Dr. Pearl was on one side of the conflict that Dr. White resolved, the additional unrationalized report from Dr. Pearl is insufficient to overcome the weight accorded Dr. White's report as the impartial medical specialist or to create a new conflict with it.¹⁷

¹³ *S.F.*, Docket No. 17-1427 (issued May 16, 2018).

¹⁴ The Board finds that the failure of the SOAF to identify Dr. Parker as a previous impartial medical examiner was harmless error.

¹⁵ *S.F.*, *supra* note 13.

¹⁶ *S.F.*, *supra* note 13; *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹⁷ *S.F.*, *supra* note 13; *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates the claimant's compensation benefits, the burden shifts to the claimant to establish that he or she has continuing disability after that date related to his or her accepted injury.¹⁸ To establish causal relationship between 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 a causal relationship is rationalized medical evidence.²⁰

ANALYSIS -- ISSUE 2

Following the termination of her wage-loss compensation and medical benefits, appellant disagreed with OWCP's March 21, 2017 termination decision and requested reconsideration on April 4, 2017. In support of her request, appellant submitted a report from Dr. Pearl dated March 29, 2017 in which he opined that appellant was totally disabled due to loss of range of motion of the cervical spine as well as pain on palpation of the paraspinal muscles in the cervical and lumbosacral spine. Dr. Pearl found that appellant had ongoing neurological complaints and objective evidence of progressive cervical spine disease as well as chronic pain syndrome with depressive elements.

The Board finds that Dr. Pearl's March 29, 2017 report is similar to his October 6, 2016 report. Dr. Pearl again opined that appellant's accepted conditions should include chronic pain syndrome and cervical and lumbosacral pain on palpation. He did not, however, provide objective findings on examination or a rationalized explanation regarding any objective medical findings and his diagnoses. Furthermore, as Dr. Pearl was on one side of the conflict that Dr. White resolved, the additional unrationalized report from Dr. Pearl is again insufficient to overcome the weight accorded Dr. White's report as the impartial medical specialist or to create a new conflict with his opinion.²¹

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 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 March 20, 2017. The Board further finds that

¹⁸ *S.F.*, *supra* note 13; *Manuel Gill*, 52 ECAB 282 (2001).

¹⁹ *Id.*

²⁰ *C.W.*, Docket No. 12-1211 (issued November 15, 2012); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

²¹ *Supra* note 17.

appellant has not established continued employment-related disability or residuals after March 20, 2017.

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 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