

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

M.C., Appellant)	
)	
and)	Docket No. 18-1199
)	Issued: April 5, 2019
DEPARTMENT OF DEFENSE, DEFENSE)	
COMMISSARY AGENCY, Parris Island, SC,)	
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 May 24, 2018 appellant filed a timely appeal from a November 30, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include additional conditions; and (2) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical

¹ Appellant filed a timely request for oral argument before the Board. By order dated March 6, 2019, the Board, after exercising its discretion, denied her request finding that her arguments on appeal could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 18-1199 (issued March 6, 2019).

² 5 U.S.C. § 8101 *et seq.*

benefits, effective April 30, 2017, as she no longer had residuals or disability due to her accepted employment injuries.

FACTUAL HISTORY

On March 2, 2000 appellant, then a 47-year-old sales store checker, filed an occupational disease claim (Form CA-2) alleging that she experienced left arm pain from her shoulder to her fingers causally related to factors of her federal employment. She did not stop work, but began performing modified employment. OWCP accepted the claim for left lateral epicondylitis and bilateral carpal tunnel syndrome. It assigned File No. xxxxxx898. On March 21, 2001 appellant underwent a left carpal tunnel release.

OWCP subsequently accepted appellant's April 2, 2002 occupational disease claim for cervical spondylosis at C5-6 beginning April 1998. It assigned File No. xxxxxx944. OWCP administratively combined the two claims, with File No. xxxxxx898 designated as the master file.

Appellant retired on disability, effective February 18, 2006. She elected to receive compensation benefits under FECA, effective October 22, 2007. OWCP paid appellant wage-loss compensation for total disability on the periodic rolls beginning March 14, 2010.

In a report dated November 19, 2015, Dr. Leland C. Stoddard, Jr., a Board-certified orthopedic surgeon, noted that recent electrodiagnostic testing of appellant's left upper extremity had yielded normal findings. He diagnosed left elbow transient synovitis.

OWCP on December 13, 2016 referred appellant to Dr. Henry Clark Deriso, a Board-certified orthopedic surgeon, for a second opinion examination. It requested that he address whether she had continuing residuals from either her April 1998 or January 2000 employment injuries. OWCP provided Dr. Deriso with a statement of accepted facts (SOAF) that indicated that it had accepted as employment related left lateral epicondylitis, bilateral carpal tunnel syndrome, and cervical spondylosis at C5-6.

In a report dated December 28, 2016, Dr. Deriso discussed appellant's history of an upper extremity condition and cervical sprain due to factors of her federal employment. On examination, he found mild tenderness at the medial and lateral epicondyle with full range of motion and no atrophy. Dr. Deriso found a positive Tinel's sign on the left and an equivocal left Phalen's test with no loss of thenar strength or muscle weakness. He further found a normal neurological examination of the upper extremities with no loss of muscle strength of the cervical spine or "evidence of a cervical disc clinically." Dr. Deriso noted that he did not believe that repetitive stress was a cause of carpal tunnel syndrome and questioned OWCP's acceptance of the condition. He diagnosed post left carpal tunnel syndrome, post left radial nerve release, a history of lateral and medial epicondylitis, a history of a cervical degenerative disc, and mild right carpal tunnel syndrome by prior electromyogram (EMG). Dr. Deriso found that appellant had no current left upper extremity diagnosis, noting that recent EMG studies had yielded normal findings. He related that, "[Appellant] also has a history of degenerative discs of the cervical spine, but if she had a sprain of this [this] usually resolves within a matter of weeks therefore I do not think she has any diagnosis in regards to her cervical spine at the present time." Dr. Deriso noted that the findings

on MRI scan study of the cervical disc were normal and that appellant had no abnormal findings of the right upper extremity. He opined that she could return to work in her usual employment.

On February 15, 2017 OWCP notified appellant that it proposed to terminate her wage-loss compensation and medical benefits, as the evidence of record established that she no longer had any employment-related residuals or due to her accepted bilateral carpal tunnel syndrome, left epicondylitis, or cervical spondylosis at C5-6.

In a response received by OWCP on February 24, 2017, appellant asserted that Dr. Deriso referred to an incorrect physician as her attending physician. She also submitted a November 18, 2016 decision from the Social Security Administration, finding that she was totally disabled.

By decision dated April 13, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the opinion of Dr. Deriso represented the weight of the evidence and established that she had no further residuals or disability due to her accepted employment injuries.

On April 24, 2017 appellant requested an oral hearing before an OWCP hearing representative.

Thereafter, OWCP received an August 15, 2016 report from Dr. Stoddard. Dr. Stoddard discussed appellant's complaints of left arm pain and numbness and increasing neck pain. He opined that she had "degenerative disc changes and possibly some spinal stenosis and left[-]sided radiculitis that could certainly explain [appellant's] shoulder and arm symptoms."

On October 21, 2016 appellant received treatment from Dr. Luke Baxley, who specializes in emergency medicine, for injuries sustained on that date in a motor vehicle accident.³ Dr. Baxley diagnosed an exacerbation of chronic pain with no apparent injury after a motor vehicle accident.

A December 23, 2016 cervical MRI scan study showed degenerative disc disease with bilateral foramina encroachment at C4-5, C5-6, and C6-7.

On October 20, 2017 Dr. Stoddard diagnosed cervical disc disorder with radiculopathy, bilateral carpal tunnel syndrome, and left radial tunnel syndrome. He advised that he had treated appellant for years for her carpal and radial tunnel syndrome and found that it limited her ability to perform heavy or repetitive labor. Dr. Stoddard also related that, "[Appellant] also has cervical disc pathology causing radiculitis in the upper extremities. I believe [that] this disables her from most heavy and medium occupations confining her to light duty only involving limited use of the upper extremities."⁴

In a September 28, 2017 statement, appellant noted that Dr. Deriso appeared unaware that she had a cervical condition causing radiculopathy.

³ In a report dated April 24, 2017, Dr. Stoddard diagnosed degenerative cervical spinal stenosis and the sequela of a motor vehicle accident.

⁴ A nurse practitioner evaluated appellant for neck, thoracic, and low back pain following a motor vehicle accident.

By decision dated November 30, 2017, OWCP's hearing representative affirmed the April 13, 2017 decision. She found that the opinion of Dr. Deriso represented the weight of the evidence and established that appellant had no further disability or residuals of her accepted employment injury. The hearing representative further determined that appellant had not established that the acceptance of her claim should be expanded to include additional conditions.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including the fact that he or she is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

When an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁸ To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include additional conditions.

⁵ *Supra* note 2.

⁶ *See C.W.*, Docket No. 17-1636 (issued April 25, 2018).

⁷ *R.H.*, 59 ECAB 382 (2008).

⁸ *See T.F.*, Docket No. 17-0645 (issued August 15, 2018).

⁹ *See S.A.*, Docket No. 18-0399 (issued October 16, 2018).

¹⁰ *See P.M.*, Docket No. 18-0287 (issued October 11, 2018).

OWCP accepted that appellant sustained left lateral epicondylitis and bilateral carpal tunnel syndrome under OWCP File No. xxxxxx898, and cervical spondylosis at C5-6 under OWCP File No. xxxxxx898.

In an August 15, 2016 report, Dr. Stoddard noted that appellant had numbness and pain in her left arm and worsening neck pain. He diagnosed possible spinal stenosis and left radiculopathy with degenerative changes. On October 20, 2017 Dr. Stoddard advised that appellant had work limitations from carpal and radial tunnel syndrome and cervical disc disorder with radiculopathy. He opined that she was totally disabled. Dr. Stoddard did not address whether the diagnosed conditions were causally related to the accepted employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹¹ Dr. Stoddard's reports are thus insufficient to support that appellant's accepted conditions should be expanded.¹² The Board thus finds that she has not met her burden of proof.

On appeal appellant asserts that the acceptance of her claim should be expanded to include additional conditions. As set forth above, she has not submitted reasoned evidence from a physician, who, based on an accurate factual history, found that she had additional conditions causally related to her employment injuries, and thus has not met her burden of proof.¹³

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.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.¹⁴ After 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.¹⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.¹⁷ To terminate authorization for medical treatment, OWCP must

¹¹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹² See *L.G.*, Docket No. 18-0321 (issued October 25, 2018).

¹³ See *H.R.*, Docket No. 18-0640 (issued December 6, 2018).

¹⁴ *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

¹⁵ *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

¹⁶ *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

¹⁷ *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.¹⁸

OWCP's procedures provide as follows:

"The [claims examiner] is responsible for ensuring that the SOAF is correct, complete, unequivocal, and specific. When the [district medical adviser], second opinion specialist, or referee physician renders a medical opinion based on an SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether."¹⁹

ANALYSIS -- ISSUE 2

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 30, 2017.

OWCP referred appellant to Dr. Deriso for a second opinion examination to determine whether she had continued residuals or disability due to either of her accepted employment injuries.

Initially, the Board notes that, in securing the opinion of a medical specialist, OWCP's procedures provide that a SOAF and development questions are to be prepared by the claims examiner for use of the physician.²⁰ The claims examiner is required to set forth the relevant facts of the case, including the employee's date of injury, age, job held when injured, the mechanism of injury, and any conditions claimed or accepted by OWCP.²¹ OWCP provided Dr. Deriso with a SOAF that listed the accepted conditions as left lateral epicondylitis, bilateral carpal tunnel syndrome, and cervical spondylosis at C5-6.

In a report dated December 28, 2016, Dr. Deriso indicated that appellant had sustained a cervical sprain and an upper extremity condition causally related to factors of her federal employment. He diagnosed post left carpal tunnel syndrome, post left radial nerve release, a history of lateral and medial epicondylitis, a history of a cervical degenerative disc, and mild right carpal tunnel syndrome. Dr. Deriso advised that appellant had no current evidence of a right or left upper extremity condition or cervical condition. He discussed her history of degenerative changes in the cervical spine, but noted that if she had only experienced a sprain that would have resolved within weeks, and thus concluded that she had no cervical spine diagnosis. Dr. Deriso indicated that repetitive stress did not usually cause carpal or radial tunnel syndrome. As noted, however, OWCP had previously accepted as employment related the conditions of left lateral

¹⁸ *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

¹⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

²⁰ *Id.* at Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.3 (September 2009).

²¹ *Id.*

epicondylitis, bilateral carpal tunnel syndrome, and cervical spondylosis at C5-6. Dr. Deriso found that appellant had sustained only a cervical sprain and questioned OWCP's acceptance of carpal tunnel syndrome. OWCP provided him with a SOAF to ensure that his report was based on a proper factual background.²² As Dr. Deriso's opinion is outside the framework of the SOAF, it is based on an inaccurate history and, thus, of diminished probative value.²³ Consequently, OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective April 30, 2017.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include additional conditions. The Board further finds that OWCP has not met its burden of proof to terminate her wage-loss compensation and medical benefits, effective April 30, 2017.

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2017 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: April 5, 2019
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

²² *Supra* note 18.

²³ *Supra* note 17; *E.W.*, Docket No. 17-0707 (issued September 18, 2017).