



## ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation effective October 3, 2017 because she had no disability due to her accepted October 20, 1998 work-related injury subsequent to that date.

## FACTUAL HISTORY

On October 20, 1998 appellant, then a 36-year-old transportation clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained a left upper extremity injury while at work on that date. She indicated that she was stripping bills of lading when she felt a pop in her left wrist and numbness in her left fingers. On October 21, 1998 appellant began performing modified-duty work without wage loss.

OWCP initially accepted appellant's claim for left wrist strain. Appellant stopped work on April 16, 1999 and, on the same date, Dr. Ronald K. Robinson, an attending Board-certified orthopedic surgeon, performed OWCP-approved arthroscopy with debridement and de Quervain's tendon release of the left wrist. She returned to modified-duty work on June 4, 1999.<sup>3</sup>

By decision dated July 26, 2000, OWCP granted appellant a schedule award for 23 percent permanent impairment of her left upper extremity.

On April 22, 2003 Dr. Robinson opined that appellant should only use her left hand/wrist on a minimal basis and that she should not engage in forceful grasping, pushing, pulling, repetitive motion, or lifting more than two pounds with her left upper extremity.

In early-May 2003 the employing establishment advised appellant that it could no longer accommodate her work restrictions and she was being separated from the employing establishment, effective May 8, 2003. Appellant had last worked on May 2, 2003 and she received disability compensation on the daily rolls commencing May 3, 2003.<sup>4</sup>

In late-May 2003 appellant was referred for participation in an OWCP-sponsored vocational rehabilitation program designed to return her to work. OWCP noted that recent medical evidence showed that appellant could perform modified-duty work.

OWCP further developed the medical evidence of record. It declared a conflict in the medical evidence regarding the existence of work-related disability, and referred appellant for an impartial medical examination to Dr. David Bomboy, a Board-certified orthopedic surgeon. By decision dated December 28, 2007, OWCP terminated appellant's wage-loss compensation effective December 29, 2007 based on May 21 and June 13, 2007 reports of Dr. Bomboy. However, by decision dated July 11, 2008, a representative of OWCP's Branch of Hearings and

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<sup>3</sup> Appellant used leave to cover periods of work stoppage after the April 16, 1999 surgery.

<sup>4</sup> Appellant received disability compensation on the periodic rolls commencing May 18, 2003.

Review reversed OWCP's December 28, 2007 decision, finding that Dr. Bomboy's opinion on work-related disability was not based on a complete and accurate factual and medical history.<sup>5</sup>

In May 2009 OWCP referred appellant for a second opinion examination to Dr. Darryl W. Peterson, a Board-certified orthopedic surgeon. It requested that Dr. Peterson answer various questions regarding residuals of appellant's accepted employment injuries, the existence of objective *versus* subjective findings, and appellant's ability to work as a transportation clerk.

In a July 8, 2009 report, Dr. Peterson diagnosed mild-to-moderate cervical spinal stenosis, cervical osteoarthritis, cervical radiculitis (left greater than right), thoracic outlet syndrome (left greater than right), shoulder impingement syndrome (left greater than right), radial styloid tenosynovitis, radial nerve mono-neuritis of the left superficial radial nerve branch, right carpal tunnel syndrome, and left distal radio-ulnar joint sprain with residual laxity. He indicated that these conditions were caused or aggravated by the October 20, 1998 employment injury.

In a September 18, 2009 letter, OWCP requested that Dr. Peterson provide a supplemental report containing a more comprehensive assessment of appellant's medical condition. It noted that Dr. Peterson had failed to answer the questions posed at the time of the original referral in May 2009. Dr. Peterson did not respond to OWCP's request for a supplemental report.

In February 2010 appellant began treatment with Dr. Theodore Knatt, a Board-certified orthopedic surgeon. On May 16, 2014 Dr. Knatt performed OWCP-authorized left upper extremity surgery, including transposition of the left ulnar nerve, ulnar tunnel release, tenosynovectomy, carpal tunnel release, and cubital tunnel release.<sup>6</sup>

On June 13, 2016 Chase Roy, a physical therapist, conducted a functional capacity evaluation (FCE) to evaluate appellant's ability to perform various physical functions. Mr. Roy noted that the FCE results showed that appellant was functioning at the sedentary-light physical demand level with the ability to engage in occasional lifting of 10 to 15 pounds. He advised that appellant showed some inconsistencies during FCE testing, but noted that she had nearly full range of motion of her cervical spine when she was under informal observation. Mr. Roy indicated that appellant likely demonstrated the ability to return to her previous work as a transportation clerk with the employing establishment, but he noted that he could not make a definite determination in this regard as he did not have a formal description of the position.

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<sup>5</sup> OWCP reinstated appellant's wage-loss compensation, effective December 29, 2007. On July 18, 2008 it expanded the accepted conditions to include degeneration of the triangular fibrocartilage of the left wrist based on the medical opinion of Dr. Gerald Barnes, a Board-certified orthopedic surgeon, who had served as an OWCP referral physician.

<sup>6</sup> OWCP upgraded the accepted conditions to also include left carpal tunnel syndrome and left ulnar lesion.

In a July 7, 2016 letter, Mr. Roy indicated that he had reviewed a job description which did not describe the exact demands of the transportation clerk position,<sup>7</sup> and he repeated his earlier statement that the June 13, 2016 FCE showed that appellant could at least work at the sedentary-light physical demand level with the ability to engage in occasional lifting of 10 to 15 pounds. He noted that appellant's further progression was self-limited given her self-limiting behavior at the June 13, 2016 FCE, and he concluded that appellant demonstrated the ability to return to her previous level of work as a transportation clerk.

In a March 30, 2017 work status report, Dr. Knatt indicated that appellant could return to work within the restrictions delineated in the June 13, 2016 FCE. In a March 30, 2017 narrative report, he reported the findings of the physical examination he conducted on that date. Dr. Knatt noted that light touch was intact in appellant's left upper extremity without pain, that her digits did not exhibit erythema or swelling, and that there was no significant pain with resisted left wrist extension. He characterized appellant's condition as stable and improving, and diagnosed paresthesias and left forearm pain.

Through an attachment to an April 19, 2017 letter, Brenda Dumas, appellant's rehabilitation counselor, provided Dr. Knatt with a formal job description of the transportation clerk position. The job description noted that the position required handling of documents such as bills of lading, logs, and register files. The section of the job description detailing the physical demands of the position indicated that the position was primarily sedentary in nature, but that it required some walking as well as some standing at a counter to sort and distribute bills of lading. In her April 19, 2017 letter, Ms. Dumas requested that Dr. Knatt respond "Yes" or "No" to the statement, "In my professional medical opinion, [appellant] can return to work as a transportation clerk, as outlined in the attached job description."

On April 20, 2017 Dr. Knatt, in response to Ms. Dumas' April 19, 2017 letter, checked a "Yes" box in response to the statement, "In my professional medical opinion, [appellant] can return to work as a transportation clerk, as outlined in the attached job description."

In a July 18, 2017 letter, OWCP advised appellant of its proposed termination of her wage-loss compensation benefits effective October 3, 2017 because she ceased to have disability due to her October 20, 1998 work injury. It noted that it would not terminate her entitlement to medical benefits related to treatment of her October 20, 1998 work injury. OWCP indicated that it was relying on Dr. Knatt's opinion that appellant could perform her date-of-injury job, *i.e.*, transportation clerk.

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<sup>7</sup> Mr. Roy reviewed a May 26, 2016 statement of accepted facts (SOAF) which described appellant's former transportation clerk position, noting that it involved such duties as processing incoming and outgoing bills of lading, stripping bills of lading, processing carrier documentation, and directing commercial drivers. The position was primarily sedentary in nature, but required some standing, walking, bending, and handling/lifting computer papers and bills of lading. The May 26, 2016 SOAF was produced in connection with the referral of appellant for a second opinion examination with Dr. Daniel P. Dare, a Board-certified orthopedic surgeon. In a July 7, 2016 report, Dr. Dare indicated that appellant seemed to have developed complex regional pain syndrome "or something akin to that" due to her October 20, 1998 employment injury.

In an August 22, 2017 letter, counsel argued that the accepted conditions should be expanded to include cervical radiculopathy, complex regional pain syndrome, and several other conditions.

By decision dated October 2, 2017, OWCP terminated appellant's wage-loss compensation, effective October 3, 2017, because she had no disability due to her October 20, 1998 work injury after that date. It noted that it was not terminating appellant's entitlement to medical benefits related to treatment of her October 20, 1998 work injury. OWCP found that the termination action was justified by the opinion of the treating physician, Dr. Knatt.

On October 12, 2017 appellant, through counsel, requested a telephone hearing with a representative of OWCP's Branch of Hearings and Review. During the hearing held on March 19, 2018 counsel argued that Dr. Knatt failed to provide an adequate explanation of his opinion that appellant was capable of working in her date-of-injury position.

In an April 3, 2018 report, Dr. Knatt characterized appellant's medical condition as stable and improving, and he diagnosed paresthesias and left forearm pain.

By decision dated June 5, 2018, OWCP's hearing representative affirmed OWCP's October 2, 2017 decision terminating appellant's wage-loss compensation benefits effective October 3, 2017. She found that the weight of the medical opinion evidence regarding work-related disability continued to rest with the opinion of Dr. Knatt.<sup>8</sup>

### **LEGAL PRECEDENT**

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>9</sup> OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>10</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>11</sup>

### **ANALYSIS**

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation, effective October 3, 2017, because she had no disability due to her October 20, 1998 work injury subsequent to that date.

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<sup>8</sup> The hearing representative noted that appellant sustained work injuries in December 1992 and February 1997 involving her chest wall, but that these injuries were not the subject of the present appeal.

<sup>9</sup> *C.C.*, Docket No. 17-1158 (issued November 20, 2018); *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>10</sup> *A.D.*, Docket No. 18-0497 (issued July 25, 2018). In general, the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury. *See* 20 C.F.R. § 10.5(f).

<sup>11</sup> *See C.C.*, *supra* note 9.

The Board finds that the weight of the medical evidence is represented by the opinion of Dr. Knatt, appellant's attending physician. The opinion of Dr. Knatt establishes that appellant had no disability due to her October 20, 1998 work injury after October 3, 2017 because she was capable of returning to her date-of-injury position as a transportation clerk.<sup>12</sup>

In a March 30, 2017 work status report, Dr. Knatt indicated that appellant could return to work within the restrictions delineated in a June 13, 2016 functional capacity evaluation (FCE).<sup>13</sup> In a March 30, 2017 narrative report, he reported the findings of the physical examination he conducted on that date. Dr. Knatt noted that light touch was intact in appellant's left upper extremity without pain, that her digits did not exhibit erythema or swelling, and that there was no significant pain with resisted wrist extension. He characterized appellant's condition as stable and improving, and he diagnosed paresthesias and left forearm pain. On April 20, 2017 Dr. Knatt, in response to an April 19, 2017 letter from appellant's rehabilitation counselor, checked a "Yes" box in response to the statement, "In my professional medical opinion, [appellant] can return to work as a transportation clerk, as outlined in the attached job description."

The job description of the transportation clerk position noted that the position required the handling of documents such as bills of lading, logs, and register files. The section of the job description detailing the physical demands of the position indicated that the position was primarily sedentary in nature, but that it required some walking as well as some standing at a counter to sort and distribute bills of lading. The Board notes that Dr. Knatt has provided a clear opinion that appellant's physical capabilities would allow her to perform the specific duties of a transportation clerk.

The Board has reviewed the opinion of Dr. Knatt and notes that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of the present case.<sup>14</sup> At the time he provided his opinion that appellant could work as a transportation clerk, Dr. Knatt had recently examined appellant and noted limited findings on physical examination. He also took into consideration appellant's ability to perform specific physical tasks as evidenced by the findings of the June 13, 2016 FCE and then considered whether appellant was capable of performing the job duties delineated in the formal job description for the transportation clerk position. For these reasons the Board finds that OWCP properly terminated appellant's wage-loss compensation as appellant no longer had disability due to the accepted injury.

Counsel argues on appeal that Dr. Knatt failed to provide an adequate basis for his opinion that appellant was capable of working in her date-of-injury position, *i.e.*, transportation clerk. However, the Board has explained that Dr. Knatt provided a well-reasoned opinion regarding appellant's work capabilities. Counsel further argues that appellant could not work due to complex regional pain syndrome and several conditions other than the accepted conditions of left wrist strain, triangular fibrocartilage of the left wrist, left carpal tunnel syndrome, and left ulnar lesion.

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<sup>12</sup> See *supra* note 10.

<sup>13</sup> On June 13, 2016 Mr. Roy, a physical therapist, conducted an FCE to evaluate appellant's ability to perform various physical functions. Mr. Roy noted that the FCE results showed that appellant was functioning at the sedentary-light physical demand level which would allow her to engage in occasional lifting of 10 to 15 pounds.

<sup>14</sup> See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

However, OWCP has not accepted these conditions as work related and the case record does not contain a rationalized medical opinion establishing any of them as work related.<sup>15</sup> The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.<sup>16</sup>

### CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation effective October 3, 2017 because she had no disability due to her October 20, 1998 work-related injury subsequent to that date.

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<sup>15</sup> Where an employee claims that a condition not accepted 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. *C.S.*, Docket No. 17-1686 (issued February 5, 2019); *see also Jaja K. Asaramo*, 55 ECAB 200 (2004). The Board notes that neither Dr. Peterson nor Dr. Dare provided a rationalized opinion on causal relationship, and therefore of limited probative value in establishing a work-related pain condition for the further reason that it contains a speculative discussion of appellant's pain condition. *See A.D.*, Docket No. 17-1310 (issued June 7, 2018).

<sup>16</sup> *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017). On appeal, counsel also argues that OWCP failed to consider the effects of appellant's prior work injuries involving her chest wall from December 1992 and February 1997, but OWCP specifically indicated that these injuries, which preceded the October 20, 1998 injury currently under consideration, were not the subject of the present appeal.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2019  
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