

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 5, 2017, as she no longer had residuals or disability causally related to her accepted December 27, 2013 employment injury; (2) whether appellant has established continuing employment-related disability or residuals after December 5, 2017, causally related to her accepted December 27, 2013 employment injury; and (3) whether appellant has met her burden of proof to establish intermittent periods of disability from December 1, 2014 through December 5, 2017 causally related to her accepted employment injury.

FACTUAL HISTORY

On December 31, 2013 appellant, then a 57-year-old medical instruction technician, filed a traumatic injury claim (Form CA-1) alleging that on December 27, 2013 she tripped and fell while in the performance of duty. She stopped work on December 27, 2013, but returned to limited duty for four hours per day in February 2014. OWCP accepted the claim for a closed fracture of the right pubis and a right shoulder strain and paid appellant wage-loss benefits on the supplemental rolls from February 11 through June 10, 2014.

On June 10, 2014 appellant began treating with Dr. Darren L. Bergey, an orthopedic surgeon, who diagnosed cervical, lumbar spine, and right shoulder impingement conditions and opined that appellant was totally disabled.

Appellant filed claims for compensation (Form CA-7) commencing June 10, 2014. By decisions dated September 29 and November 4, 2014, OWCP denied her claims for wage-loss compensation as there was no medical evidence to substantiate work-related disability for the claimed periods. Appellant returned to modified work on November 26, 2014.

Dr. Bergey continued to treat appellant for the diagnosed conditions of right C5 radiculopathy with deltoid and biceps weakness, C5-6 moderately severe right neuroforaminal stenosis, right shoulder impingement syndrome, right sacroiliac joint dysfunction, and L5-S1 disc degeneration.

OWCP notified appellant on September 13, 2016 that she would be referred for a second opinion evaluation to determine the status of her accepted conditions, appropriate treatment, and extent of disability.

In a February 16, 2017 report, Dr. Michael J. Einbund, a Board-certified orthopedic surgeon and second opinion physician, reviewed the statement of accepted facts and medical records. Appellant's physical examination revealed a healed fracture of right superior and inferior pubic rami, closed, and resolved right shoulder sprain. Dr. Einbund noted that the medical records detailed evidence of nonindustrial conditions which he indicated represented age-related changes. This included degenerative disc disease of the cervical spine with evidence of foraminal narrowing and disc bulges, a right cervical radiculopathy (confirmed by electromyogram/nerve conduction velocity (EMG/NCV) studies of record), and lumbar spine degenerative disc disease with right sacroiliac dysfunction. Dr. Einbund opined that the accepted diagnosed conditions had resolved. He found that appellant's pubic fracture had healed without complications and that her right shoulder and right upper extremity symptoms were related to the confirmed right cervical

radiculopathy, not to residuals of the accepted shoulder sprain. Dr. Einbund explained that her symptoms of right shoulder pain radiating down the arm with numbness and tingling were not commensurate with a sprain. He further opined that there were no objective findings to support ongoing residuals or ongoing medical treatment. Dr. Einbund found that maximum medical improvement (MMI) was reached on or about June 2015, when Dr. Bergey indicated that appellant's right superior and inferior pubic ramus fracture had healed. He noted that she had reported that she was disabled for seven to eight weeks following the December 27, 2013 injury, which he opined was reasonable due to the employment-related conditions. Dr. Einbund indicated that there were no other periods of disability causally related to the injury. He advised that appellant's ongoing medical treatment and physical limitations were related to her preexisting underlying cervical and lumbar spine conditions.

In medical reports dated February 22, April 3, and May 16, 2017, Dr. Bergey noted that appellant continued to be denied treatment for her cervical and lumbar spine conditions. He indicated that she was temporarily partially disabled and was to remain at modified duty. In his April 3, 2017 report, Dr. Bergey reviewed Dr. Einbund's second opinion evaluation and determined that appellant's accepted right pubic ramus fracture had resolved. He noted that she continued to have residual pain affecting the lumbar spine and right shoulder and recommended that causation be determined by a medical/legal evaluation.

In a letter dated June 2, 2017, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits as the evidence of record established that she no longer had residuals or disability causally related to the December 27, 2013 employment injury. It noted that Dr. Einbund had opined that her cervical, lumbar spine, and right shoulder impingement conditions were related to her underlying degenerative cervical and lumbar spine conditions. OWCP afforded appellant 30 days to respond if she disagreed with the proposed termination.

On July 14 and 25, 2017 OWCP received multiple wage-loss compensation claims (Form CA-7) claiming disability compensation for the period commencing December 1, 2014 and continuing.

In a September 13, 2017 development letter, OWCP advised appellant that additional evidence was needed to support her intermittent disability claim and informed her of the evidence needed. It noted that she was claiming disability for conditions not accepted under the case and explained that her physician must submit a comprehensive narrative medical report, which included a history of injury and thorough explanation with findings as to how her condition/disability worsened such that she was no longer able to perform the duties of her modified-duty position and its relationship to the December 27, 2013 employment injury. OWCP afforded appellant 30 days to submit the requested evidence.

In a June 26, 2017 report, Dr. Bergey indicated that appellant was totally disabled when she was initially seen on June 10, 2014. As of January 15, 2015, appellant was partially disabled and primarily performed desk work within prescribed modified-duty work with part-time hours. Dr. Bergey provided examination findings and diagnosed: right C5 radiculopathy with deltoid and biceps weakness, C5-6 moderately severe right neuroforaminal stenosis, right shoulder impingement syndrome, right elbow contusion, resolved; right sacroiliac joint dysfunction; L5-S1 disc degeneration; and right superior and inferior pubic ramus fractures, healed. He opined that when appellant fell on December 27, 2013 she also sustained a traumatic sacroiliac joint injury. While the pubic rami fractures had healed, her ongoing right buttocks and posterior thigh pain was

due to sacroiliac joint dysfunction. Dr. Bergey explained that this occurred due to the pelvic fracture as she fell hard enough to fracture her pelvic ring. He also opined that appellant's right shoulder impairment was due to the fall as there were no industrial or nonindustrial injuries that caused her current level of impairment. Dr. Bergey indicated that she had reached MMI and that she had permanent work restrictions.

By decision dated December 5, 2017, OWCP denied appellant's claim for compensation for the period commencing December 1, 2014 and continuing. It found that the medical evidence from Dr. Bergey did not support intermittent periods of disability commencing December 1, 2014 and continuing based on the accepted employment-related medical conditions.

By decision also dated December 5, 2017, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical evidence rested with Dr. Einbund, OWCP's second opinion examiner, who concluded that she had no residuals or disability due to her accepted employment conditions.

On December 11, 2017 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. At the May 22, 2018 telephonic hearing, counsel noted that appellant was working full duty, but still experienced pain.

In a December 19, 2017 progress report, Dr. Bergey amended appellant's June 26, 2017 permanent work restrictions as she indicated that the employing establishment was unable to accommodate those restrictions.

In a June 14, 2018 supplemental report, Dr. Bergey provided a discussion related to appellant's cervical and lumbar spine conditions. For the lumbar spine, he noted that she complained of low back pain and buttocks pain following the accepted employment injury. Dr. Bergey opined that appellant's primary impairment was related to traumatic sacroiliac joint dysfunction as there was some mild tenderness of the low lumbar spine. He concluded that there was a reasonable medical probability that her lumbar spine impairment was due to the employment injury. For the cervical spine, Dr. Bergey noted that appellant complained of posterior right shoulder pain and pain radiating down the right arm and that she had also identified multiple prior industrial injuries to the cervical spine. He indicated that there was no evidence of a new or further injury to the cervical spine. Dr. Bergey concluded that the cervical radiculopathy was present prior to the employment injury, but indicated that he would amend his opinion based upon a reasonable medical probability that her current cervical radiculopathy occurred as a result of the injury.

By decision dated July 26, 2018, an OWCP hearing representative affirmed OWCP's prior decisions dated December 5, 2017.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.⁴ After it has determined that an employee has disability causally related to his or her federal employment, it may not terminate compensation

⁴ *J.T.*, Docket No. 18-1300 (issued March 22, 2019); *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).

without establishing that the disability has ceased or that it is no longer related to the employment.⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ 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.⁸

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.⁹ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment incident, the employee must submit rationalized medical opinion evidence based on a complete medical and factual background supporting such causal relationship.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 5, 2017, as she no longer had residuals or disability causally related to her accepted December 27, 2013 employment injury.

OWCP referred appellant to Dr. Einbund for a second opinion evaluation to determine the status of her accepted conditions and her work capacity. In his February 16, 2017 report, Dr. Einbund described her December 27, 2013 employment injury and noted that her claim was accepted for fracture of pubis and sprain of the right shoulder and upper arm. Appellant's physical examination revealed a healed fracture of the right superior and inferior pubic rami, closed without complications, and a resolved right shoulder sprain. Dr. Einbund also found that her current right shoulder and right upper extremity symptoms were related to her right cervical radiculopathy and not to any residuals of the accepted shoulder sprain. Thus, he opined that there were no objective findings of the accepted conditions to support ongoing residuals requiring ongoing medical treatment. Dr. Einbund explained that appellant's medical records detailed evidence of nonindustrial conditions which represented age-related changes. This included degenerative disc disease of the cervical spine with evidence of foraminal narrowing and disc bulges, a right cervical radiculopathy (confirmed by EMG/NCV studies of record), and lumbar spine degenerative disc disease with right sacroiliac dysfunction. Dr. Einbund explained that appellant's symptoms of right shoulder pain radiating down the arm with numbness and tingling were not commensurate

⁵ *D.M.*, Docket No. 17-1992 (issued September 12, 2018); *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁶ *J.T.*, *supra* note 4; *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁷ *D.M.*, *supra* note 5; *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ *R.P.*, *supra* note 4; *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

⁹ *See S.C.*, Docket No. 17-1587 (issued January 2, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁰ *See S.C., id.*; *Jennifer Atkerson*, 55 ECAB 317 (2004).

with a sprain injury. He concluded that, based upon her own statements, her disability had been limited to seven to eight weeks following the December 27, 2013 injury and that there were no other periods of disability causally related to the injury.

The Board finds that OWCP properly accorded the weight of medical opinion to Dr. Einbund who reported that appellant no longer had residuals or disability as a result of the December 27, 2013 employment injury. Dr. Einbund based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion that she did not have residuals or work limitations as a result of the employment injury. Rather, he opined that appellant's current conditions and work limitations were a result of the natural progression of her preexisting conditions. Dr. Einbund explained that the accepted conditions had resolved and that there were no other periods of disability causally related to the December 27, 2013 employment injury after the initial seven to eight weeks following the injury. The Board finds that he provided a well-rationalized opinion based on medical evidence regarding appellant's December 27, 2013 employment injury. Accordingly, OWCP properly relied on Dr. Einbund's February 15, 2017 second opinion report in terminating her wage-loss compensation and medical benefits.¹¹

The remaining evidence submitted prior to OWCP's termination of appellant's compensation, medical reports of Dr. Bergey, are insufficient to establish that she had residuals or disability of her accepted employment-related conditions.

Dr. Bergey opined, in his June 26, 2017 report, that appellant's pubic rami fracture had healed, however, she had sacroiliac joint dysfunction due to the pelvic fracture. He also opined that her right shoulder condition was due to the fall as she had no other industrial or nonindustrial injuries. This opinion, however, is conclusory in nature and not supported by rationalized medical opinion.¹² Dr. Bergey did not provide a rationalized medical opinion either explaining how appellant's current conditions and disability were causally related to the accepted conditions or provide a rationalized explanation of how any of the additional diagnosed conditions were causally related to or aggravated by the December 27, 2013 employment injury.¹³

The Board finds that the weight of the evidence, as represented by the second opinion specialist, Dr. Einbund, establishes that appellant had no further employment-related residuals or disability as of December 5, 2017, the date OWCP terminated her wage-loss compensation and medical benefits.¹⁴

¹¹ See *N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

¹² See *R.T.*, Docket No. 15-0907 (issued August 18, 2015).

¹³ *Supra* note 10.

¹⁴ See *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *O.W.*, Docket No. 17-1881 (issued May 1, 2018).

LEGAL PRECEDENT -- ISSUE 2

As OWCP properly terminated appellant's medical benefits, the burden shifts to her to establish continuing disability or residuals, after that date, causally related to her accepted injury.¹⁵ To establish a causal relationship between the condition as well as 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 a causal relationship.¹⁶ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing disability or residuals, on or after December 5, 2017, causally related to her accepted December 27, 2013 employment injury.

Following the termination of her compensation, appellant submitted a December 19, 2017 progress note in which Dr. Bergey amended her permanent restrictions because the employing establishment was unable to accommodate her previous restrictions. As this evidence failed to address the relevant issue of her disability or need for medical treatment due to her employment injuries, it is of diminished probative value.¹⁸

In a June 14, 2018 supplemental report, Dr. Bergey opined that appellant's right sacroiliac joint dysfunction was due to the pelvic fracture as she had mild tenderness of the low lumbar spine and pain in the low back and buttocks following the injury. While he concluded that there was a reasonable medical probability that her lumbar spine impairment was due to the employment injury, he offered no medical rationale to support how he arrived at his conclusion on causation.¹⁹ Dr. Bergey further found that there was no evidence of a new or further injury to the cervical spine. The Board has previously held that neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.²⁰ While Dr. Bergey indicated that he would amend his opinion if appellant's cervical radiculopathy was present prior to the employment injury, his opinion is insufficient to establish causal relationship as it is speculative, conclusory in nature, and not supported by medical rationale.²¹ Accordingly, he did not provide a rationalized medical opinion either explaining how her disability was causally related to the accepted conditions or provide a rationalized explanation of how any

¹⁵ See *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *C.S.*, Docket No. 18-0952 (issued October 23, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

¹⁶ *Id.*

¹⁷ See *C.S.*, *supra* note 15; *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁸ See *R.R.*, *supra* note 14; *L.B.*, Docket No. 18-0560 (issued August 20, 2018).

¹⁹ See *R.T.*, *supra* note 12.

²⁰ See *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

²¹ *Id.*

of the additional diagnosed conditions were causally related to or aggravated by the December 27, 2013 employment injury.

The Board thus finds that appellant has not met her burden of proof to establish continuing disability or residuals on or after December 5, 2017.²²

LEGAL PRECEDENT -- ISSUE 3

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.²³ For each period of disability claimed, the employee has the burden of proof to establish that she was disabled for work as a result of the accepted employment injury.²⁴ Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.²⁵

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.²⁶ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.²⁷ An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.²⁸ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.

The claimant must submit medical evidence showing that the condition claimed is disabling.²⁹ Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.³⁰ The evidence submitted must be reliable, probative, and substantial.³¹ The physician's opinion must be based on the facts of the case and

²² *A.M.*, Docket No. 17-1192 (issued September 19, 2018).

²³ *See V.G.*, Docket No. 18-0936 (issued February 6, 2019); *B.K.*, Docket No. 18-0386 (issued September 14, 2018); *see also Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

²⁴ *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *see also Amelia S. Jefferson, id.*

²⁵ *See S.G., id.*; *Edward H. Horton*, 41 ECAB 301 (1989).

²⁶ *See V.G., supra* note 23: *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

²⁷ *See S.G., supra* note 24; *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

²⁸ *See S.G., id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

²⁹ *See V.G., supra* note 23; *M.D.*, Docket No. 18-0474 (issued October 3, 2018); 20 C.F.R. § 10.115.

³⁰ *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

³¹ *Id.*

the complete medical background of the employee, must be one of reasonable medical certainty, and must include objective findings in support of its conclusions.³²

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.³³

ANALYSIS -- ISSUE 3

The Board finds that appellant has not met her burden of proof to establish intermittent periods of disability commencing December 1, 2014 through December 5, 2017 causally related to her accepted employment injury.

In support of her claim for wage-loss compensation, appellant submitted reports from her treating physician, Dr. Bergey, who diagnosed right C5 radiculopathy with deltoid and biceps weakness; C5-6 moderately severe right neuroforaminal stenosis; right shoulder impingement syndrome; right elbow contusion, resolved; right sacroiliac joint dysfunction; L5-S1 disc degeneration; and right superior and inferior pubic ramus fractures healed. He opined that she was partially disabled. As previously discussed Dr. Bergey failed to provide a well-rationalized opinion with objective evidence to establish that her other medical conditions were caused or aggravated by the December 27, 2013 employment injury. He offered no objective findings or medical rationale as to why appellant's accepted conditions caused disability.³⁴ In his reports, Dr. Bergey related that her pelvis fracture had resolved and he did not specifically address her accepted right shoulder strain. The issue is whether the accepted conditions in this claim caused disability. Dr. Bergey offered no objective findings for the dates in question which would substantiate that appellant was disabled due to her accepted conditions.³⁵

As appellant has not provided further medical evidence with a rationalized opinion explaining why she was disabled from work for intermittent periods from December 1, 2014 through December 5, 2017 causally related to her accepted employment conditions, the Board finds that she has not met her burden of proof.

On appeal counsel contends that OWCP's decision is contrary to law and fact. As discussed above, the medical reports of record are insufficient to establish that appellant's disability was causally related to her accepted conditions during the claimed period. Additionally, OWCP properly terminated her entitlement to wage-loss compensation and medical benefits as the opinion of Dr. Einbund, the second opinion physician, constituted the weight of the medical evidence.

³² 20 C.F.R. § 10.501(a)(2).

³³ See *S.G.*, *supra* note 24; *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

³⁴ See *S.G.*, *supra* note 24; *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Ricky S. Storms*, 52 ECAB 349 (2001).

³⁵ See *V.G.*, *supra* note 23.

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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 5, 2017, as she no longer had residuals or disability causally related to her accepted December 27, 2013 employment injury. The Board further finds that she has not met her burden of proof to establish continuing employment-rated disability or residuals after December 5, 2017 due to her accepted employment conditions. The Board also finds that appellant has not met her burden of proof to establish intermittent periods of disability from December 1, 2014 through December 5, 2017 causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 6, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board