

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's medical benefits, effective August 14, 2018, as she no longer had residuals causally related to her accepted June 26, 2017 employment injury; and (2) whether appellant has met her burden of proof to establish continuing residuals on or after August 14, 2018 causally related to the accepted June 26, 2017 employment injury.

FACTUAL HISTORY

On June 26, 2017 appellant, then a 54-year-old part-time custodian, filed a traumatic injury claim (Form CA-1) alleging that on that date she experienced severe pain in the left side of her back and left hip when pulling on a lawnmower crank while in the performance of duty. She stopped work on June 26, 2017 and returned to limited-duty work on July 3, 2017.⁴ On August 9, 2017 OWCP accepted appellant's claim for left hip sprain and lumbar spine sprain.

Appellant received medical treatment from Dr. Leia M. Dawson, an osteopathic physician specializing in family medicine. In an August 18, 2017 attending physician's report (Form CA-20), Dr. Dawson noted that on June 26, 2017 appellant injured her hip, back, and neck when pulling the crank on a lawnmower. She reported findings of hip pain and lumbar spasm. Dr. Dawson diagnosed unspecified hip pain, unspecified back ache, and muscle spasm. She checked a box marked "yes" indicating that the condition found was caused or aggravated by the employment activity. Dr. Dawson also completed a Form CA-17, which indicated that appellant could work with restrictions.

On August 23, 2017 appellant underwent diagnostic testing. A left hip magnetic resonance imaging (MRI) scan showed mild hip osteoarthritis with suspected nondisplaced bilateral hip labral tears and multiple uterine fibroids. An August 23, 2017 lumbar MRI scan revealed multilevel lumbar spine degenerative changes noted at left L4-5.

Appellant began physical therapy treatments on September 6, 2017 and submitted various physical therapy progress notes.

On February 7, 2018 OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions, to Dr. Howard B. Krone, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of her accepted June 26, 2017 employment injury.

In a March 1, 2018 report, Dr. Krone reviewed the SOAF and the medical evidence of record. He accurately described the June 26, 2017 employment injury and noted that appellant's claim had been accepted for lumbar sprain and left hip sprain. Dr. Krone indicated that diagnostic testing showed preexisting mild osteoarthritis of the left hip, facet arthritis from L1 to L4 of the lumbar spine, and moderate disc bulge and degenerative changes at L5-S1. Upon examination of appellant's low back, he observed no point tenderness on palpation of the lumbar spine, sacroiliac area, or sciatic notch. Dr. Krone reported range of motion (ROM) findings of 50 degrees of

⁴ In a June 26, 2017 duty status (Form CA-17), N.M., a certified nurse practitioner, indicated that appellant could work her regular schedule with restrictions of lifting and carrying up to five pounds and no climbing, bending, stooping, twisting, pulling, pushing, or reaching above the shoulder.

forward flexion, 30 degrees of extension, and 20 degrees of left and right lateral flexion with no complaints of pain. Straight leg raise testing was negative. Upon examination of appellant's left hip, Dr. Krone observed full ROM with no pain.

In response to OWCP's questions, Dr. Krone reported that appellant's objective findings from physical examination were normal. He further indicated that appellant's lumbar spine and left hip MRI scans showed chronic changes and mild arthritis, which was consistent with a 55-year-old lady. Dr. Krone opined that appellant's accepted lumbar sprain and left hip sprain conditions had resolved. He explained that most sprains typically resolve in a four- to six-week time period with conservative treatment, and did not require the extensive physical therapy that appellant had received. Dr. Krone concluded that appellant had reached maximum medical improvement (MMI) and that no further treatment was needed. He also completed a work capacity evaluation (Form OWCP-5c) which indicated that appellant could return to her usual job.

On May 24, 2018 OWCP proposed to terminate appellant's medical benefits because her June 26, 2017 work-related injury had resolved. It found that the weight of medical evidence rested with the March 1, 2018 medical report of Dr. Krone, who found that she no longer had any residuals causally related to her accepted lumbar and left hip sprains. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

Appellant submitted a July 5, 2018 permanent impairment report by Dr. Neil Allen, a Board-certified internist and neurologist. Dr. Allen noted that appellant's claim was accepted for left hip and lumbar strains and reported lumbar examination findings of tenderness upon palpation of the paraspinal muscles. Straight leg raise testing was negative. Upon examination of appellant's left hip, Dr. Allen observed tenderness in the region of the greater trochanter and 5/5 muscle strength. He opined that according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment (A.M.A., Guides)*⁵ and *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July/August 2009) (*The Guides Newsletter*), appellant had zero percent permanent impairment of her right lower extremity and five percent permanent impairment of her left lower extremity.

By decision dated August 13, 2018, OWCP finalized the termination of appellant's medical benefits, effective August 14, 2018. It found that the weight of medical evidence rested with Dr. Krone, OWCP's second opinion examiner, who concluded in his March 1, 2018 report that appellant had no residuals due to her accepted June 26, 2017 work-related injury.

On August 23, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

In an October 12, 2018 letter, appellant requested that her claim for the left hip be reopened. She noted that she had just moved and transferred her case files, so she was not sure who was currently working on her cases.

A hearing was held on January 15, 2019. Appellant subsequently submitted a January 21, 2019 letter by Dr. Leezanne R. Zeng, an osteopathic physician specializing in family medicine,

⁵ A.M.A., *Guides* (6th ed. 2009).

who related that appellant was treated in her office that day and could continue working with a 10-pound weight restriction.

By decision dated March 27, 2019, an OWCP hearing representative affirmed the August 13, 2018 decision.⁶

LEGAL PRECEDENT -- ISSUE 1

According to FECA,⁷ once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.⁸ It may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁹ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁰

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹¹ 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.¹²

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's medical benefits, effective August 14, 2018.

OWCP accepted that appellant sustained lumbar and left hip sprains as a result of her June 26, 2017 employment injury. By decision dated August 13, 2018, it terminated her medical benefits based on the opinion of Dr. Krone, the second opinion examiner, who concluded in a March 1, 2018 report that she no longer suffered residuals of her June 26, 2017 employment injury.

In his report, Dr. Krone described the June 26, 2017 employment injury and noted that appellant's claim was accepted for lumbar sprain and left hip sprain. He also noted that diagnostic testing showed preexisting mild osteoarthritis of the left hip, facet arthritis from L1 to L4 of the lumbar spine, and moderate disc bulge and degenerative changes at L5-S1. Dr. Krone conducted a physical examination of appellant's low back and noted no point tenderness on palpation of the lumbar spine, sacroiliac area, or sciatic notch. Straight leg raise testing was negative. Examination

⁶ On February 12, 2019 OWCP granted appellant a schedule award for one percent left lower extremity impairment. The award ran for 2.88 weeks from March 1 to 21, 2018. The award was based on the January 22, 2019 impairment rating report of Dr. Arthur S. Harris, a Board-certified orthopedic surgeon and OWCP medical adviser.

⁷ *Supra* note 2.

⁸ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁹ *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

¹⁰ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *Del K. Rykert*, 40 ECAB 284 (1988).

¹¹ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹² *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

of appellant's left hip revealed full range of motion with no pain. Dr. Krone opined that appellant's accepted lumbar and left hip sprains had resolved. He explained that most sprains typically resolve in a four- to six-week period of time with conservative treatment. Dr. Krone further noted that appellant's examination findings were normal and that her chronic and degenerative changes were consistent with her age.

The Board finds that OWCP properly accorded the weight of the medical opinion evidence with Dr. Krone. Dr. Krone 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 a current residual injury. He noted that examination findings were normal and that appellant's degenerative and arthritic changes were consistent with her age. The Board finds that Dr. Krone provided a well-rationalized opinion based on medical evidence regarding her June 26, 2017 employment injury. Accordingly, OWCP properly relied on his March 1, 2018 second opinion report in terminating appellant's medical benefits for the June 26, 2017 employment injury.¹³

Following its May 24, 2018 notice of proposed termination, OWCP received a July 5, 2018 permanent impairment examination report by Dr. Allen. Dr. Allen reported lumbar examination findings of tenderness upon palpation of the paraspinal muscles and left hip examination findings of tenderness in the region of the greater trochanter and 5/5 muscle strength. He opined that appellant had five percent permanent impairment of the left lower extremity. Dr. Allen did not, however, provide an opinion that appellant continued to have residuals due to her accepted June 26, 2017 employment injury. The Board finds, therefore, that the remaining contemporaneous medical evidence is insufficient to overcome the weight of medical evidence given to Dr. Krone's March 1, 2018 second opinion report in terminating her medical benefits, effective August 14, 2018, for the June 26, 2017 employment injury.¹⁴

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

¹³ See *S.M.*, Docket No. 18-0673 (issued January 25, 2019); see also *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

¹⁴ See *N.G.*, Docket No. 18-1340 (issued March 6, 2019); see also *J.P.*, Docket No. 16-1103 (issued November 25, 2016).

¹⁵ *B.A.*, Docket No. 17-1471 (issued July 27, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

¹⁶ *C.L.*, Docket No. 18-1379 (issued February 3, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹⁷ See *C.S.*, Docket No. 18-0952 (issued October 23, 2018); *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing residuals, on or after August 14, 2018, causally related to her accepted June 26, 2017 employment injury.

Following the termination of her medical benefits, effective August 14, 2018, appellant submitted a January 21, 2019 letter by Dr. Zeng, who indicated that appellant may work with a 10-pound weight restriction. Dr. Zeng did not, however, address the relevant issue of whether appellant had continued residuals of her work-related lumbar and left hip sprain injuries. This report, therefore, is of diminished probative value to establish appellant's entitlement to continued medical benefits.¹⁸

As appellant has not provided rationalized medical evidence why she continued to have residuals of her accepted conditions on or after August 14, 2018, 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, OWCP properly terminated her medical benefits as the opinion of Dr. Krone, the second opinion physician, constituted the weight of the medical evidence. Additionally, the medical evidence of record is insufficient to establish that appellant continued to have residuals of her accepted lumbar and left hip conditions on or after August 14, 2018.

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 medical benefits, effective August 14, 2018, as she no longer had residuals causally related to her accepted June 26, 2017 employment injury. The Board further finds that she has not met her burden of proof to establish continuing residuals on or after August 14, 2018 causally related to her accepted June 26, 2017 employment injury.

¹⁸ See *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *O.W.*, Docket No. 17-1881 (issued May 1, 2018).

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2020
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