

FACTUAL HISTORY

On June 27, 2016 appellant, then a 56-year-old social worker, filed a traumatic injury claim (Form CA-1) alleging that on June 17, 2016 he injured his arm when he tripped over a curb and fell while in the performance of duty. He did not immediately stop work. On June 29, 2016 appellant underwent right arm surgery for radial and ulnar shaft open reduction and internal fixation. He stopped work on July 17, 2016. On October 20, 2016 OWCP accepted appellant's claim for fracture of the right forearm. On March 16, 2017 it entered him on the periodic rolls, effective February 14, 2017.

On May 23, 2017 OWCP referred appellant, a statement of accepted facts (SOAF), and a list of questions to Dr. Juon-Kin K. Fong, an orthopedic surgeon, for a second opinion evaluation. In a July 6, 2017 report, Dr. Fong noted appellant's history of injury and medical treatment. He further noted that he performed a physical examination and diagnosed healed fractures both bones of the right forearm, impingement syndrome right shoulder, right carpal tunnel syndrome, and cervical stenosis. Dr. Fong recommended right shoulder surgery, but noted that appellant was scheduled for cervical decompression surgery which was not related to the accepted employment injury.

Appellant underwent a C3-4 discectomy and fusion on July 25, 2017. In a report dated November 10, 2017, Dr. James Edward Eichel, a Board-certified family practitioner, noted appellant's June 17, 2016 fall and opined that he likely injured his back in the fall as well, as he had no back symptoms prior to the fall. He concluded that the back pain diagnosis should be added to appellant's accepted conditions.

On January 8, 2018 Dr. Mathias Masem, a Board-certified orthopedic surgeon, performed right endoscopic carpal tunnel release and right shoulder arthroscopy and subacromial decompression. OWCP authorized the right shoulder surgery on January 15, 2018.

On January 16, 2018 OWCP expanded the acceptance of appellant's claim to include impingement syndrome of the right shoulder.

In a January 24, 2018 report, Dr. Eichel again opined that appellant's June 17, 2016 employment injury was sufficient to cause his cervical pathology. He noted that appellant had no signs of spine arthritis prior to his fall.

On April 3, 2018 OWCP expanded the acceptance of appellant's claim to include right carpal tunnel syndrome.

By decision dated May 9, 2018, OWCP found that appellant had not met his burden of proof to establish a spine condition as causally related to his accepted June 17, 2016 employment injury. On May 23, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

On October 11, 2018 Dr. Masem found that appellant had reached maximum medical improvement (MMI) with regard to his right shoulder, forearm fracture, and right carpal tunnel syndrome. He opined that appellant should be able to resume his ordinary occupational activities at any time.

During the hearing held on November 30, 2018, appellant attributed his spinal condition and cervical fusion to his accepted employment injury.

In a January 13, 2019 report, Dr. Eichel asserted that, but for appellant's employment injury, he would not have developed neck and back symptoms requiring surgery and resulting in impaired balance and loss of leg strength.

On January 22, 2019 Kelly Maris-Weissburg, a nurse practitioner, noted that appellant wished to return to work, but was required to complete an examination before he was allowed back. She indicated that appellant could resume ordinary occupational activities at any time.

By decision dated February 13, 2019, OWCP's hearing representative affirmed the May 9, 2018 OWCP decision.

In a September 17, 2019 note, Dr. Masem reported that appellant had reached MMI on October 11, 2018 and that no further appointments were to be made. He noted that, at that time, appellant was eligible to return to full-duty work as a social worker. However, appellant never returned to work as he needed to take the Law and Ethics examination and the licensed clinical social worker examination. Dr. Masem indicated that he experienced a brief flare of symptoms in January 2019, but that it was unclear why he had not returned to work as he was doing well. He recounted that appellant had some chronic bilateral shoulder pain, but that his right wrist and hand were minimally symptomatic. Dr. Masem again opined that appellant could resume his ordinary occupational activities at any time, but that he should have a provision for future care in case he experienced a flare-up in his symptoms. He also noted that surgical removal of the forearm plates might be necessary, as well as treatment for persistent shoulder pain. Dr. Masem also completed an attending physician's report (Form CA-20) of even date and indicated that appellant could have resumed regular work on October 11, 2018.

On September 23, 2019 OWCP proposed to terminate appellant's wage-loss compensation based on Dr. Masem's reports.² It afforded him 30 days to submit additional evidence or argument if he disagreed with the proposed termination. No additional evidence was received by OWCP.

By decision dated November 6, 2019, OWCP terminated appellant's wage-loss compensation, effective November 10, 2019, finding that he no longer had disability causally related to his accepted employment injury.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.³ It may not terminate compensation

² On October 8, 2019 appellant filed an appeal from the notice of proposed termination. The Board dismissed that appeal on July 17, 2020 as the case was in an interlocutory posture. See *Order Dismissing Appeal*, Docket No. 20-0054 (issued July 17, 2020).

³ *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.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation, effective November 10, 2019, as he no longer had disability causally related to his accepted June 17, 2016 employment injury.

In his October 11, 2018 and September 17, 2019 reports, Dr. Masem found that appellant had reached MMI on October 11, 2018 and was able to resume his ordinary occupational activities at any time. In his September 17, 2019 note, he found that appellant had a brief flare in January 2019, but was otherwise minimally symptomatic. Dr. Masem noted that appellant was eligible to return to full-duty work as a social worker. However, appellant never returned to work because he needed to take the Law and Ethics examination and the licensed clinical social worker examination. Dr. Masem also completed a form report dated September 17, 2019 and again opined that appellant could have resumed regular work beginning October 11, 2018.

The Board finds that OWCP properly accorded the weight of the medical evidence with the opinion of Dr. Masem, appellant's attending physician, who reported that appellant no longer had disability as a result of his accepted employment injury. As Dr. Masem's report was sufficiently rationalized and based on an accurate factual history and the complete medical record, his opinion constitutes the weight of the medical evidence. Furthermore, appellant has not submitted medical evidence supporting continuing disability or need for continued medical treatment.⁶

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation, effective November 10, 2019, as he no longer had residuals or disability causally related to his accepted June 17, 2016 employment injury.

⁴ *R.P., id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁵ *R.P., id.*; *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *Z.D.*, Docket No. 19-0662 (issued December 5, 2019) (the Board found that the weight of the medical evidence was represented by appellant's attending physician and noted that appellant had not submitted medical evidence supporting continuing disability or need for continued medical treatment).

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 3, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board