

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 22, 2019.

FACTUAL HISTORY

On July 2, 2018 appellant, then a 42-year-old part-time flexible clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 28, 2018 she sustained a left knee injury when she attempted to move a mail pallet and put her hand up to stop a package from falling off and twisted her knee while in the performance of duty. She did not stop work, but began working in a light-duty position on July 2, 2018. OWCP accepted appellant's claim for left knee sprain. Appellant stopped work on August 18, 2018 and OWCP paid her wage-loss compensation for disability from work on the supplemental rolls commencing on the same date.

In a July 12, 2018 report, Dr. Nalan Reibschied, a Board-certified family medicine physician, discussed appellant's June 28, 2018 accident at work and diagnosed left knee sprain.

In a September 28, 2018 report, Dr. Edward G. Dempsey, an osteopath and Board-certified internist, indicated that appellant was undergoing evaluation at a medical facility for chronic left knee pain. He advised that he would be following up with her in November 2018 to reevaluate her symptoms and noted that she needed to be off work until that time. On November 2, 2018 Dr. Dempsey advised that appellant should remain off work until December 14, 2018.

On November 20, 2018 OWCP referred appellant for a second opinion examination with Dr. Robert F. Draper, a Board-certified orthopedic surgeon. It provided a copy of the case record, including a recent statement of accepted facts (SOAF) and a series of questions, and requested that he provide an opinion regarding whether she continued to have residuals and disability from work due to the accepted June 28, 2018 employment injury.

In a December 11, 2018 report, Dr. Draper detailed appellant's factual and medical history, noting that she sustained a left knee sprain while moving a pallet at work on June 28, 2018. He summarized her medical treatment since the injury and indicated that upon examination by her attending physicians she at times complained of pain upon light touch of the left knee. Dr. Draper reported the findings of his physical examination on December 11, 2018, noting that her left knee had full extension and 120 degrees of flexion and that there was no left knee valgus/varus instability at full extension and 30 degrees of flexion. The Lachman's, Homan's, anterior drawer and posterior signs were all normal, and there was no effusion or crepitus in the left knee. Dr. Draper noted that he could not detect that appellant's lower extremities had different temperatures. He advised that she reported tenderness upon touching of the left knee, but noted that, with extra care, she did tolerate the examination. Dr. Draper indicated that he looked to see if there was purplish discoloration or mottling of the left lower extremity, as one would see in complex regional pain syndrome (CRPS), but he did not see discoloration or mottling. He diagnosed left knee sprain and rule out unusual presentation for CRPS. Dr. Draper indicated that appellant's left knee and lower extremity complaints appeared to be unusual in terms of the degree of the reported pain. He maintained that the examination did not show significant mechanical pathology of the left knee and that diagnostic testing did not show internal derangement of the knee. Dr. Draper noted that the physical examination he performed "really does not exactly fit

CRPS,” but also advised that “[appellant’s] level of complaints in the left knee is suggestive of that.” He indicated that a lumbar sympathetic block was sometimes carried out in order to determine a patient’s response and noted that, in patients with CRPS, a lumbar sympathetic block could result in significant pain relief and serve a diagnostic purpose. Dr. Draper indicated that he was not at all sure that appellant had CRPS, but he maintained that a lumbar sympathetic block could be considered in order to confirm the diagnosis of CRPS.⁴

Dr. Draper indicated that appellant’s objective findings upon examination did not fully support her subjective complaints. In response to OWCP’s instruction to provide a list of “all current diagnoses causally connected to the [June 28, 2018] work injury,” he noted that the current diagnosis related to the employment injury was the sprain of the left knee as documented in the SOAF. Dr. Draper noted that, earlier in his report, he had discussed the possibility of appellant having CRPS and indicated that he did not believe a diagnosis of CRPS had been established. However, he noted that the issue had also been addressed earlier in his report. In response to a question about whether appellant’s work-related condition had resolved, Dr. Draper indicated, “I believe that the contusion for the left knee is not completely resolved. The work-related condition for the left knee may or may not be related to CRPS. That issue is not related.” With respect to the need for further treatment, he advised that a diagnostic lumbar sympathetic block could be carried out. Dr. Draper indicated that appellant could perform light-duty work that did not require her to lift more than 20 pounds occasionally and 15 pounds frequently and recommended that she avoid excessive standing, walking, or climbing. He noted that these were temporary restrictions and indicated that her recovery would determine her work capabilities. In a December 11, 2018 work capacity evaluation report (Form OWCP-5c), Dr. Draper indicated that appellant could not perform her regular job, but opined that she could work for eight hours per day with restrictions. He advised that his recommended work restrictions would apply for two months and noted that she could sit for six hours per day, walk or stand for four hours, squat for one hour, and push/pull/lift 20 pounds occasionally and 15 pounds frequently. Appellant could not engage in kneeling or climbing.

Appellant submitted a December 14, 2018 report from Dr. Dempsey who noted that she continued to report significant left knee/lower leg pain related to her June 28, 2018 employment injury. Dr. Dempsey diagnosed left knee pain, chronic pain syndrome, and neuralgia/neuritis. In a December 14, 2018 note, he advised that appellant would not be able to return to work until her next appointment on February 15, 2019.

On January 23, 2019 OWCP offered appellant a full-time position as a modified part-time flexible clerk. The job involved casing and distributing mail and contained restrictions on such activities as walking, standing, pushing, pulling, and lifting. Appellant refused the offered position on January 29, 2018 citing her continuing left knee pain.

In a January 31, 2019 report, Dr. Dempsey referenced appellant’s June 28, 2018 employment injury and noted that she was unable to work due to persistent severe, sharp pain in her left knee. He advised that she had numbness and tingling down her left leg into her foot/ankle

⁴ Dr. Draper noted that appellant had a pain pump which could pose problems if used at the same time she underwent a lumbar sympathetic block. He advised that, if she were to undergo a lumbar sympathetic block, she should avoid using the catheter of the pain pump and not carry out additional intrathecal injections as these were already being received through the pain pump.

and that she was unable to stand for more than two minutes at a time. Appellant also was unable to sit for more than 15 minutes at a time due to experiencing severe pain in that position. In a note dated February 15, 2019, Dr. Dempsey indicated that she was disabled until March 15, 2019.

In a March 1, 2019 letter, OWCP advised appellant of its determination that the modified part-time flexible clerk position offered by the employing establishment was suitable. It informed her that her compensation would be terminated if she did not accept the position or provide good cause for not doing so within 30 days of the date of the letter.

Appellant subsequently submitted a February 15, 2019 report from Dr. Dempsey who recommended that she undergo a sympathetic nerve block of her left leg given the severity of her symptoms. In a February 28, 2019 note, Dr. Brian S. Jacobs, an osteopath Board-certified in orthopedic surgery, advised that, based on the pain levels observed upon examination, she should not work until she was seen by a pain management specialist or completed a functional capacity examination. In a note of even date, Dr. Erik O'Connell, an osteopath Board-certified in rheumatology, indicated that appellant should not work until she was seen by a pain management specialist or evaluated by a physical therapist for functional assessment. In March 15, 2019 reports, Dr. Dempsey addressed her left leg condition and found that she was disabled until April 16, 2019. On May 7, 2019 he recommended that appellant stay off work until June 25, 2019.

In a May 23, 2019 letter, OWCP advised appellant that her reasons for not accepting the modified part-time flexible clerk position offered by the employing establishment were unjustified. It advised her that her compensation would be terminated if she did not accept the position within 15 days of the date of the letter.⁵

In a June 18, 2019 notice, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits, effective August 22, 2019, as she no longer had residuals or disability causally related to her accepted June 28, 2018 employment injury. It indicated that the weight of the medical opinion evidence with respect to employment-related residuals/disability rested with the December 11, 2018 opinion of Dr. Draper, an OWCP referral physician. OWCP afforded appellant 30 days to submit evidence and argument challenging the proposed termination action.

Appellant subsequently submitted a May 7, 2019 report from Dr. Dempsey who diagnosed causalgia of the left lower limb, neuralgia/neuritis, chronic pain syndrome, and left knee pain. On June 25, 2019 Dr. Dempsey noted that she continued to report left knee/leg pain.

By decision dated August 22, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, as she no longer had residuals or disability causally related to her accepted June 28, 2018 employment injury. It found that the weight of the medical opinion evidence with respect to employment-related residuals/disability rested with the December 11, 2018 opinion of Dr. Draper, an OWCP referral physician.

⁵ The Board notes that the case record provides no indication that OWCP pursued the matter of appellant's refusal of the modified position offered by the employing establishment after sending her the May 23, 2019 letter.

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.⁶ 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.⁷ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

ANALYSIS

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 22, 2019.

The Board finds that the December 11, 2018 opinion of Dr. Draper, which served as the basis of OWCP's termination action, does not provide a well-rationalized, unequivocal opinion that appellant had no residuals or disability related to the accepted June 28, 2018 employment injury on or after August 22, 2019.⁹ In his December 11, 2018 report, Dr. Draper discussed her history of medical treatment and reported her continuing complaints of left knee symptoms. He detailed the physical examination findings, which included findings of left knee pain upon palpation, and diagnosed left knee sprain. In response to OWCP's instruction to provide a list of "all current diagnoses causally connected to the [June 28, 2018] work injury," Dr. Draper noted that the current diagnosis related to the employment injury was a left knee sprain. The Board notes he did not provide a clear opinion that the accepted June 28, 2018 employment injury, a left knee sprain, had resolved. In addition, Dr. Draper indicated in response to a question about whether appellant's work-related condition had resolved that "the contusion for the left knee is not completely resolved." While it is unclear why, in this portion of his report, he referenced an employment-related left knee contusion rather than the accepted left knee sprain, he nevertheless provided an opinion that she continued to have employment-related residuals.

The Board notes that other aspects of Dr. Draper's December 11, 2018 report render his opinion on continuing employment-related residuals/disability equivocal in nature and, therefore, of limited probative value. Dr. Draper provided an extensive discussion regarding whether appellant had CPRS in her left lower extremity. In parts of his report, he suggested that her physical examination did not support a diagnosis of CPRS, but he also advised that her "level of complaints in the left knee is suggestive of that." Dr. Draper also did not provide a clear opinion regarding whether, if established, a CPRS condition would have been caused, in total or in part, by an employment-related cause. For example, he indicated, "The work-related condition for the

⁶ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁷ *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁸ *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁹ *See id.*

left knee may or may not be related to CRPS.¹⁰ The Board has held that a medical opinion which is equivocal in nature is of limited probative value regarding a given medical question.¹¹ In addition, Dr. Draper recommended a number of work restrictions regarding such activities as walking, standing, squatting, kneeling, climbing, and lifting. However, he did not indicate what medical conditions, whether employment related or not, would necessitate such restrictions. Moreover, Dr. Draper advised that the restrictions would only be temporarily in place for two months without explaining the reason for their temporary nature.

For these reasons, OWCP has not met its burden of proof to terminate her wage-loss compensation and medical benefits, effective August 22, 2019.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 22, 2019.

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 30, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁰ Dr. Draper also suggested that his evaluation of appellant was incomplete by recommending that she undergo a lumbar sympathetic block of the left lower extremity to determine whether a diagnosis of CPRS was warranted.

¹¹ See *E.B.*, Docket No. 18-1060 (issued November 1, 2018); *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962).