

**United States Department of Labor
Employees' Compensation Appeals Board**

J.O., Appellant

and

**DEPARTMENT OF COMMERCE, CENSUS
BUREAU, Philadelphia, PA, Employer**

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**Docket No. 19-0850
Issued: October 22, 2020**

Appearances:

Capp Taylor, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 11, 2019 appellant, through counsel, filed a timely appeal from a September 18, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² Appellant timely requested oral argument before the Board pursuant to 20 C.F.R. § 501.5(b). By order dated July 20, 2020, the Board exercised its discretion and denied the request as the matter could be adequately addressed based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 19-0850 (issued July 20, 2020).

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation benefits, effective September 21, 2014, as he no longer had disability causally related to the accepted January 6, 2010 employment injury; and (2) whether appellant has met his burden of proof to establish continuing employment-related disability or residuals on or after September 21, 2014.

FACTUAL HISTORY

On July 14, 2010 appellant, then a 33-year-old regional technician, filed a traumatic injury claim (Form CA-1) alleging that on January 6, 2010 he experienced neck, right upper arm, and right shoulder soreness when a flagpole hit him while in the performance of duty. OWCP accepted his claim for intervertebral disc disorder with myelopathy, cervical region herniated disc at the C4-5 level, and cervical radiculopathy. On May 26, 2010 appellant underwent cervical discectomy with decompression and fusion surgery by Dr. Neal Naff, a Board-certified neurosurgeon. He stopped work and returned to part-time limited-duty work on July 18, 2010.

On October 26, 2010 appellant stopped work again because the employing establishment could no longer accommodate his work restrictions. OWCP paid wage-loss compensation for total disability and placed him on the periodic rolls, effective February 13, 2011.

On November 17, 2013 appellant began work as a part-time manager for a private company, working 15 hours per week.

On March 5, 2014 OWCP referred appellant, along with a statement of accepted facts (SOAF),⁵ a copy of the case record, and a series of questions to Dr. Robert Allen Smith, a Board-certified orthopedic surgeon, for second opinion evaluation regarding the status of his accepted January 6, 2010 employment injury.

In a March 28, 2014 report, Dr. Smith reviewed the SOAF and the medical evidence of record. He accurately described the January 6, 2010 employment injury and noted that appellant's claim had been accepted for cervical intervertebral disc disorder with myelopathy, herniated disc at the C4-5 level, and cervical radiculopathy. Dr. Smith related that appellant was currently working 15 to 20 hours per week and could not work for more than 2 hours at a time because he would develop paresthetic sensation in his right thumb and index finger. Appellant also reported

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that on June 12, 2019 appellant filed an appeal from a March 8, 2019 nonmerit decision involving a different issue. The Board issued a decision in that appeal on September 24, 2020. Docket No. 20-0792 (issued September 24, 2020).

⁵ The SOAF noted that evidence in the file indicated that appellant participated in a flag football league and recently completed a 5K running race.

that his sports activities included walking on a treadmill and playing basketball. Upon examination of appellant's neck, Dr. Smith observed no spasm, atrophy, trigger points, or deformity. He reported that range of motion of the neck was quite satisfactory with 50 degrees of forward flexion, 60 degrees of extension, 40 degrees of side-bending bilaterally, and 60 degrees of rotation bilaterally. Dr. Smith reported that appellant complained of intermittent tingling in his right thumb and index finger, but had normal sensation and no strength deficit or abnormal reflexes on examination.

In response to OWCP's questions, Dr. Smith reported that the accepted condition of herniated disc at C4-5 had resolved, because it was corrected by Dr. Naff in his May 2010 surgery. He pointed out that there did not appear to be any functional testing with respect to appellant's nerve complaints following the surgery and no follow-up magnetic resonance imaging (MRI) scan study to evaluate the spinal cord after the surgery. Dr. Smith also noted that appellant did not show any hard neurological deficit in the right upper extremity on examination and that appellant's complaints of paresthesias in his right thumb were subjective. He opined: "[a]s there is no objective confirmation that [appellant] has ongoing spinal cord edema or radiculopathy in his right upper extremity, he would be at maximum medical improvement related to this incident and could return to full-time regular-duty work." Dr. Smith reported that there appeared to be a significant discrepancy between appellant's claim of inability to sustain activity beyond a few minutes if it was also true that appellant engaged in a flag football league and ran 5K races. He completed a work capacity evaluation (Form OWCP-5c) indicating that appellant could return to his usual job.

On June 30, 2014 OWCP proposed to terminate appellant's wage-loss compensation benefits and medical benefits because he was no longer disabled from work as a result of the accepted January 6, 2010 employment injury. It found that the weight of medical evidence rested with the March 28, 2014 report of Dr. Smith, who found that he was no longer totally disabled from work due to his accepted cervical injury. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if he disagreed with the proposed termination.

In a July 29, 2014 response, appellant asserted that while Dr. Smith may be qualified to evaluate work capacity regarding bone-related injuries, he was not qualified to evaluate his work capacity related to his nerve damage. He related that Dr. Naff referred him to Dr. Marcel A. Reischer, a Board-certified physiatrist who specialized in pain management, to have him evaluate appellant's nerve damage and pain management. Appellant also alleged that his participation in the 5K and flag football tournament did not reflect the pain he experienced from working.

Appellant submitted a July 25, 2014 report by Dr. Reischer, who evaluated appellant for complaints of persistent pain in the neck and shoulder following the January 6, 2010 work-related injury. He reviewed appellant's history and noted examination findings of minimal restriction in cervical motion and symmetrical shoulder motion. Dr. Reischer also reported patchy sensory deficits and no upper motor neuron signs. He assessed that appellant had continued neck and shoulder pain and continued tingling and numbness in the right arm and hand. Dr. Reischer restricted appellant from working a 40-hour workweek pending the results of an MRI scan.

In an August 6, 2014 letter, OWCP requested that Dr. Naff review a position description for appellant's date-of-injury position and the SOAF and provide an opinion on appellant's ability to return to his date-of-injury position. In an August 28, 2014 letter, Dr. Naff related that based

on his review of the SOAF, he did not see any medical reason for why appellant could not return to his sedentary work for the employing establishment.

By decision dated September 10, 2014, OWCP finalized the termination of appellant's wage-loss compensation benefits, effective September 21, 2014.⁶ It found that the weight of medical evidence rested with Dr. Smith, OWCP's second opinion examiner, who concluded in his March 28, 2014 report that appellant had no disability causally related to his accepted January 6, 2010 work-related injury.

On October 7, 2014 appellant requested reconsideration and submitted additional medical evidence. He alleged that Dr. Smith and Dr. Naff's opinion regarding appellant's ability to work was based on an orthopedic and neurosurgical standpoint. Appellant explained that his inability to return to his date-of-injury job was based on permanent nerve damage and pain management.

In a September 16, 2014 letter, Dr. Naff indicated that based on a review of Dr. Smith's report and his knowledge of the case, he believed that appellant was at maximum surgical improvement. He noted that there were "no neurosurgical contraindications for his return to work."

Appellant underwent a cervical spine MRI scan on September 17, 2014, which revealed post-surgical changes at the C4-5 level status post anterior fusion, small left paracentral vertebral body spurring, mild canal narrowing in canal stenosis and cord impingement, moderate bilateral foraminal stenosis, and small broad right paracentral disc protrusion mildly flattening the right cervical cord at C5-6.

In a September 19, 2014 report, Dr. Reischer reviewed the September 17, 2014 MRI scan, and related appellant's complaints of continued tingling and numbness in the right upper extremity. Upon physical examination, he observed patchy sensory deficits and some restriction in motion. Clonus, Babinski, and Hoffman's tests were negative. Dr. Reischer assessed that appellant continued with symptoms of numbness and pain in the right upper extremity. He reported that appellant should limit his work activity as previously indicated.

In a December 5, 2014 report, Dr. Reischer indicated that electromyography (EMG) and nerve conduction velocity (NCV) studies showed slowing bilaterally of ulnar motor conduction across the elbow and mild slowing bilaterally of median sensory conduction through the carpal tunnel. EMG study of the right upper extremity and cervical paraspinal were within normal limits. Dr. Reischer reported that there was electrodiagnostic evidence of bilateral ulnar neuropathies at the elbows and bilateral carpal tunnel syndrome and no evidence of residual cervical radiculopathy. Regarding appellant's work capacity, he related that appellant continued to have persistent functional deficit in his upper extremities, but there did not appear to be any residual radicular involvement.

In a December 16, 2014 report, Dr. Naff related appellant's complaints of increasing pain in his right arm since his last January 2014 visit and discussed that an EMG/NCV study had revealed an ulnar neuropathy at the elbow and carpal tunnel syndrome. He opined that appellant's

⁶ OWCP did not terminate appellant's medical benefits as initially proposed.

symptoms were most consistent with the ulnar neuropathy and carpal tunnel as seen on his EMG/NCV study. Dr. Naff reported that he did not think that appellant's cervical spine was contributory since the EMG/NCV study showed no evidence of radiculopathy.

By decision dated January 5, 2015, OWCP denied modification of the September 10, 2014 termination decision.

On January 4, 2016 appellant, through counsel, requested reconsideration. He argued that Dr. Smith's March 28, 2014 report was too speculative to establish the termination of appellant's wage-loss compensation benefits. Counsel asserted that Dr. Smith's opinion was based on information that appellant had engaged in flag football and a 5k race, and not on objective evidence that appellant's work-related disability had resolved. He also alleged that Dr. Smith's opinion was based on stale medical evidence as the most recent functional capacity examination (FCE) was dated October 2011.

In office notes dated April 30 and May 23, 2015, Dr. Neal B. Zimmerman, a Board-certified orthopedic surgeon, reviewed appellant's history of injury and related that appellant continued to have persistent radicular pain in his right upper extremity since cervical surgery. Examination of appellant's right upper extremity revealed equivocal Tinel's and Phalen's testing. In a May 23, 2015 note, Dr. Zimmerman opined that appellant did not have a peripheral compressive neuropathy responsible for his ongoing symptoms and that these issues were more likely centrally located.

In a June 4, 2015 report, Dr. Naff noted no changes on physical examination. He opined that the majority of appellant's right upper extremity dysfunction was related to his previously documented spinal cord injury, which had now been treated with decompression. Dr. Naff explained that the injury still persisted because there was spinal cord damage prior to the surgery. He reported that he expected the dysfunction from appellant's spinal cord injury to be permanent.

In a January 28, 2016 letter, Dr. Naff reviewed appellant's history and noted that appellant had significant post-surgical changes at the C4-5 level, as noted in his September 19, 2014 report and seen on the September 17, 2014 cervical spine MRI scan report. He related that appellant suffered from degenerative disc disease from C2 through C7 with bilateral foramina stenosis and explained that it was not unusual for a degenerative process to take place in the cervical spine following an extensive surgery such as the type that appellant had. Dr. Naff opined that these diagnoses were "consequential (or a natural progression) and caused or aggravated by the condition necessitating the fusion at C4-5." He also opined that appellant suffered from dysfunction of the right upper extremity "as a result of the cervical injury of January 2010." Dr. Naff explained that the December 5, 2014 EMG/NCV studies demonstrated continued right upper abnormalities attributable to appellant's accepted cervical radiculopathy, not carpal tunnel syndrome.

By decision dated April 1, 2016, OWCP denied modification of the January 5, 2015 decision.

On December 2, 2016 appellant, through counsel requested reconsideration. He noted that appellant was submitting new medical evidence, which showed that he was not capable of extensive use of his upper extremities as required to perform the job of a regional technician.

In a November 1, 2016 narrative report, Dr. Naff related that he concurred with the findings of the August 26, 2016 FCE. He explained that the recent FCE findings supported his previous position that appellant was not capable of the extensive use of his upper extremities to support his job as a regional technician. Dr. Naff noted that this finding was consistent with the EMG/NCV study and correlated with the findings of the cervical spine MRI scan, which demonstrated bilateral foraminal stenosis, postcervical changes. He opined that appellant continued to suffer disability from the accepted cervical injury, specifically, the inability to utilize his upper extremities for more than on an occasional basis.

By decision dated January 18, 2017, OWCP denied modification of the April 1, 2016 decision.

On August 7, 2017 appellant, through counsel, requested reconsideration. He asserted that appellant continued to suffer disability causally related to his accepted cervical radiculopathy condition, and accordingly was unable to repetitively use his right upper extremity as required to perform his date-of-injury job.

In a June 20, 2017 narrative report, Dr. Naff contested OWCP's position that his August 28, 2014 office note contradicted his most recent medical opinions regarding appellant's return to sedentary work. He noted that his August 28, 2014 note indicated that there was no neurosurgical contraindication for appellant's return to work, but that he did not address whether there were nonneurosurgical contraindications for appellant's return to work. Dr. Naff also pointed out that his August 28, 2014 note was provided before the December 5, 2014 EMG/NCV study. Additionally, he reiterated that the December 5, 2014 EMG/NCV study demonstrated that appellant still suffered from residuals of his cervical spine radiculopathy. Dr. Naff noted that he had previously explained in his January 28, 2016 report that it was not unusual for cervical radiculopathy to develop as part of the degenerative process after surgery. He further asserted that the evidence of record did not indicate the extent of appellant's participation in the recreational activities nor the extent that appellant was using his upper extremities. Dr. Naff noted that depending on appellant's involvement in flag football or the 5K race, appellant could have been using his upper extremities on a limited basis and was not performing extensive fine manipulations, such as holding small objects or keying for an extensive period of time.

By decision dated September 18, 2018, OWCP denied modification of the January 18, 2017 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it bears the burden of proof to justify termination or modification of benefits.⁷ It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁸ OWCP's

⁷ *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁸ *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see also I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation benefits, effective September 21, 2014.

OWCP accepted that appellant sustained intervertebral disc disorder with myelopathy and cervical region herniated disc at the C4-5 level and cervical radiculopathy as a result of his January 6, 2010 employment injury. By decision dated September 10, 2014, it terminated his wage-loss compensation benefits based on the opinion of Dr. Smith, the second opinion examiner, who concluded in a March 28, 2014 report that he was capable of returning to his date-of-injury job.

In his report, Dr. Smith described the January 6, 2010 employment injury and noted appellant's accepted conditions. Upon physical examination, he observed no spasm, atrophy, trigger points, or deformity. Dr. Smith related that although appellant complained of intermittent tingling in his right thumb and index finger, he observed normal sensation and no strength deficit on examination. He opined that appellant's accepted herniated disc at C4-5 condition had resolved because it was corrected in the May 2010 cervical surgery. Regarding the cervical radiculopathy condition, Dr. Smith reported that appellant did not show any hard neurological deficit in the right upper extremity on examination and that appellant's complaints of paresthesias in his right thumb were subjective. He opined that there was no objective evidence that appellant had ongoing spinal cord edema or radiculopathy in his right upper extremity. Dr. Smith completed a Form OWCP-5c indicating that appellant could return to his usual job.

The Board finds that OWCP properly accorded the weight of the medical opinion evidence with Dr. Smith. Dr. Smith based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion that appellant was no longer disabled due to his accepted January 6, 2010 employment injury. He noted that examination findings showed no neurological defects and that there was no nerve conduction testing to demonstrate that appellant had ongoing radiculopathy. Dr. Smith opined that appellant could return to full-time, regular-duty work. The Board finds that he provided a well-rationalized opinion, supported by objective findings, in response to the questions posed to him regarding appellant's January 6, 2010 employment injury and his ability to work.¹⁰ Accordingly, OWCP properly relied on Dr. Smith's March 28, 2014 second opinion report in terminating appellant's wage-loss compensation benefits for the January 6, 2010 employment injury.¹¹

Appellant submitted a July 25, 2014 report by Dr. Reischer, who reviewed appellant's history of injury and noted examination findings of minimal restriction in cervical motion,

⁹ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

¹⁰ *See V.D.*, Docket No. 19-0979 (issued February 5, 2020).

¹¹ *See S.M.*, Docket No. 18-0673 (issued January 25, 2019); *see also A.F.*, Docket No. 16-0393 (issued June 24, 2016).

symmetrical shoulder motion, patchy sensory deficits, and no upper motor neuron signs. He advised that appellant stay off of work pending the results of an MRI scan. While Dr. Reischer opined that appellant should remain off work, he did not support his opinion of disability with medical reasoning. The Board has held that a mere conclusion, without the necessary rationale as to whether a period of disability is due to an accepted employment condition, is insufficient to meet a claimant's burden of proof.¹² Thus, Dr. Reischer's opinion is of limited probative value and is also insufficient to create a conflict with Dr. Smith.¹³

Therefore, the Board finds that the medical evidence of record at the time that appellant's wage-loss compensation benefits were terminated failed to support continued disability from the accepted January 6, 2010 employment injury and therefore OWCP met its burden of proof.

LEGAL PRECEDENT -- ISSUE 2

As OWCP properly terminated appellant's wage-loss compensation benefits, the burden shifts to her to establish continuing disability or residuals, after that date, causally related to her accepted employment injury.¹⁴ 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.¹⁵ Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁶

ANALYSIS -- ISSUE 2

Appellant submitted a series of reports and letters from Dr. Naff. Initially, Dr. Naff indicated in reports dated August 28 to December 16, 2014 that appellant was able to return to work from a neurosurgical stand point and that appellant's current right upper extremity symptoms were not related to his accepted cervical injuries. In a subsequent letter dated January 28, 2016, he related that appellant suffered from dysfunction of the right upper extremity "as a result of the cervical injury of January 2010." Dr. Naff explained that the December 5, 2014 EMG/NCV studies demonstrated continued right upper extremity abnormalities attributable to the accepted cervical radiculopathy. He indicated in a November 1, 2016 report that, appellant was unable to use his upper extremities, for more than on an occasional basis, due to his accepted cervical injury, and accordingly, remained disabled from work. This opinion, however, contradicts Dr. Naff's earlier opinion that there was no evidence of cervical radiculopathy and that appellant was able to return

¹² *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *E.L.*, Docket No. 17-1632 (issued January 3, 2018).

¹³ *D.L.*, Docket No. 19-0900 (issued October 28, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁴ *See S.M.*, *supra* note 11; *Manuel Gill*, 52 ECAB 282 (2001).

¹⁵ *C.L.*, Docket No. 18-1379 (issued February 3, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹⁶ *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).

to work. The Board has found that inconsistent and contradictory reports from the same physician lack probative value and cannot constitute competent medical evidence.¹⁷

In his June 20, 2017 report, Dr. Naff clarified that his previous office notes were consistent with his current opinion since his previous reports did not address whether there were nonneurosurgical contraindications for his return to work. He noted that this opinion was provided before the December 5, 2014 EMG/NCV study. The Board notes, however, that even in the subsequent December 16, 2014 report, Dr. Naff related that the EMG/NCV study demonstrated that appellant's right arm pain and paresthesia were most consistent with ulnar neuropathy and carpal tunnel, and not appellant's cervical spine injury. Dr. Naff has not provided a well-rationalized explanation for why appellant's current symptoms and inability to work are causally related to his accepted cervical radiculopathy in light of his previous reports.¹⁸

Additionally, in letters dated January 28, 2016 and June 20, 2017, Dr. Naff diagnosed degenerative disc disease from C2 through C7 and explained that it was part of the degenerative process following an extensive surgery such as the type that appellant had. He also opined that appellant suffered from dysfunction of the right upper extremity due to his January 2010 cervical surgery. The Board, however, finds that Dr. Naff's opinion does not contain sufficient medical rationale to establish that appellant had continuing disability on or after September 21, 2014, causally related to the accepted January 6, 2010 employment injury. While Dr. Naff diagnosed additional conditions, he provided no rationale explaining how physiologically appellant developed the additional cervical and right upper extremity conditions as a result of the accepted January 6, 2010 employment injury.¹⁹ He only provided a conclusory opinion in which he opined that appellant could not work, primarily due to his right upper extremity symptoms. The Board finds, therefore, that Dr. Naff's opinion is of limited probative value because he has not provided medical rationale in support of his opinion on appellant's continuing work-related disability.²⁰

Appellant also received medical treatment from Dr. Reischer. In reports dated September 19 and December 5, 2014, Dr. Reischer related that there was electrodiagnostic evidence of bilateral ulnar neuropathies at the elbows and bilateral carpal tunnel syndrome, but no evidence of residual cervical radiculopathy. He opined that appellant continued to have persistent functional deficit in his upper extremity and recommended that appellant limit his work activity. Although he noted appellant's inability to work, Dr. Reischer did not provide medical reasoning to support his opinion on disability, nor did he attribute appellant's disability to the accepted January 6, 2010 employment injury.²¹ Likewise, in reports dated May 23 and April 30, 2015, Dr. Zimmerman also related that appellant's most symptomatic issue appeared to be right median nerve compression at the wrist. He also did not address the relevant issue of whether appellant

¹⁷ *K.S.*, Docket No. 11-2071 (issued April 17, 2012); *Cleona M. Simmons*, 38 ECAB 814 (1987).

¹⁸ *See V.H.*, Docket No. 18-0456 (issued August 9, 2019).

¹⁹ *L.S.*, Docket No. 19-0959 (issued September 24, 2019).

²⁰ *See L.K.*, Docket No. 19-0313 (issued January 15, 2020); *see also T.W.*, Docket No. 18-1573 (issued July 19, 2019).

²¹ *F.S.*, Docket No. 18-0098 (issued August 13, 2018); *P.W.*, Docket No. 17-0514 (issued June 9, 2017).

had work-related disability on or after September 21, 2014. Accordingly, these reports are of diminished probative value and insufficient to establish appellant's entitlement to continued wage-loss compensation benefits.²²

The record also includes reports of diagnostic studies including cervical spine MRI scans. The Board has previously held that diagnostic studies, standing alone, lack probative value as they do not address causal relationship. For this reason, this evidence is not sufficient to meet his burden of proof.²³

The Board finds that the evidence of record lacks rationalized medical evidence sufficient to meet appellant's burden of proof to establish that he has continuing disability on or after September 21, 2014 causally related to the accepted January 6, 2010 employment injury. Appellant, therefore, has not met his burden of proof.²⁴

On appeal counsel argues that the medical evidence of record is sufficient to establish that appellant was unable to work due to his accepted January 6, 2016 employment injury. He asserts that Dr. Naff adequately explained why appellant still suffered from his accepted cervical radiculopathy condition and that appellant's right upper extremity dysfunction was related to the accepted spinal injury. As explained above, the Board finds that OWCP properly evaluated the evidence of record, including Dr. Naff's reports, and found that appellant has not met his burden of proof to establish continuing disability on or after September 21, 2014 causally related to his accepted January 6, 2016 employment injury.

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 benefits, effective September 21, 2014, as he no longer had disability causally related to the accepted January 6, 2010 employment injury. The Board further finds that appellant has not met his burden of proof to establish continuing disability on or after September 21, 2014 causally related to his January 6, 2010 employment injury.

²² C.C., Docket No. 19-1062 (issued February 6, 2020).

²³ G.S., Docket No. 18-1696 (issued March 26, 2019); A.B., Docket No. 17-0301 (issued May 19, 2017).

²⁴ L.K., *supra* note 20.

ORDER

IT IS HEREBY ORDERED THAT the September 18, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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