

residuals or disability causally related to her accepted employment conditions; and (2) whether appellant has met her burden of proof to establish continuing employment-related disability or residuals, on or after September 28, 2018, due to the accepted employment conditions.

FACTUAL HISTORY

On June 16, 2003 appellant, then a 42-year-old claims examiner, filed a traumatic injury claim (Form CA-1) alleging that on June 12, 2003 she sustained injuries to her head, cheek, lip, wrist, neck, shoulder, and knee when she tripped after her sandal caught in a rug, struck her head against a file cabinet, and fell to the floor while in the performance of duty. OWCP accepted the claim for cervical sprain, left wrist sprain, and right knee contusion. By decision dated February 18, 2004, it accepted appellant's claim for a recurrence of disability commencing January 6, 2004. OWCP paid her wage-loss compensation on the supplemental rolls commencing August 27, 2003 and later on the periodic rolls commencing May 16, 2004.

Over time, appellant continued to receive medical treatment from several attending physicians, including Dr. Jack D'Angelo, a physician specializing in physical medicine and rehabilitation, Dr. Richard A. Bova, a chiropractor, Dr. Christopher M. Perez, a Board-certified psychiatrist, Ilana Reich, Ph.D., a clinical psychologist, and Dr. Ernest B. Visconti, Board-certified in infectious disease.

In a May 16, 2018 report, Dr. Reich noted appellant's June 12, 2003 history of injury and provided an update regarding appellant's medical status. She opined that appellant was totally and permanently disabled due to anxiety and depression, as well as appellant's physical conditions.

Dr. Visconti noted in a May 17, 2018 attending physician's report (Form CA-20), that appellant had a history of arthritis with parovirus, as well as neck, wrist, and knee injuries, with an injury date of June 12, 2003. He also noted a diagnosis of auto immune disease and opined that she remained totally disabled due to these conditions. Dr. Visconti, in a work capacity evaluation form (Form OWCP-5c) of even date, indicated that appellant was unable to return to work.

Dr. Visconti, in a May 19, 2018 report, noted that he had treated appellant since December 17, 2003 and that she had employment-related chronic parovirus. He noted that she also sustained neck, knee, and back injuries from a fall at work.

On June 13, 2018 OWCP referred appellant, a statement of accepted facts (SOAF),³ and the medical record, to Dr. Andrew Farber, an osteopathic physician Board-certified in orthopedic surgery, for a second opinion evaluation to determine whether she continued to have disability or residuals from her accepted June 12, 2003 employment injury.

In a July 9, 2018 report, Dr. Farber reviewed the medical record and the SOAF. He noted that OWCP had accepted the claim for right knee contusion, cervical sprain, and left wrist sprain. On examination Dr. Farber noted mild lower cervical paraspinal tenderness, no bilateral knee tenderness, negative bilateral Lachman's test, and negative bilateral McMurray's tests. He also

³ In the SOAF, OWCP noted that it had accepted the condition of parovirus in an occupational disease claim under OWCP File No. xxxxxx784, which had been administratively closed due to lack of activity.

provided goniometric measurements for range of motion. In response to OWCP's question regarding diagnoses due to the accepted June 12, 2003 employment injury, Dr. Farber opined that "appellant is suffering from cervical sprain, right knee contusion, and left wrist sprain." He concluded that the accepted conditions of cervical sprain and right knee contusion had resolved and that the left wrist sprain "seems to have resolved." Dr. Farber indicated that appellant was able to return to work as a claims representative with no restrictions.

By notice dated August 22, 2018, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Farber's opinion that the accepted conditions had ceased without residuals. It afforded her 30 days to submit additional evidence.

In a September 6, 2018 report, Dr. Visconti diagnosed parvovirus and severe bilateral shoulder and knees arthritic pain and occasional finger joint severe arthritic pain.

By decision dated September 28, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits effective that day, finding that Dr. Farber's report was entitled to the weight of the medical evidence.

On January 17, 2019 appellant, through counsel, requested reconsideration and asserted that OWCP had improperly terminated appellant's wage-loss compensation and medical benefits based upon Dr. Farber's opinion. Counsel also noted that OWCP had accepted an occupational disease claim with an August 31, 2003 date of injury for parovirus.

By decision dated April 16, 2019, OWCP denied modification of the September 28, 2018 termination decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁴ 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. Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ To terminate authorization for medical treatment, OWCP

⁴ *S.R.*, Docket No. 19-1229 (issued May 15, 2020); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *S.R.*, *id.*; *K.W.*, Docket No. 19-1224 (issued November 15, 2019); *see M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *S.R.*, *id.*; *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective September 28, 2018.

OWCP terminated appellant's wage-loss compensation and medical benefits based on the July 9, 2018 report of Dr. Farber, an OWCP second-opinion physician. Dr. Farber reviewed her history of injury and noted that her claim was accepted for right knee contusion, cervical sprain, and left wrist sprain. Upon examination of appellant's cervical spine, he observed mild lower cervical paraspinal tenderness. Dr. Farber also noted no bilateral knee tenderness, negative bilateral Lachman's test, and negative bilateral McMurray's tests. He opined that "appellant is suffering from cervical sprain, right knee contusion, and left wrist sprain" but he also concluded that the accepted cervical sprain and right knee conditions had resolved, and that her left wrist strain condition "seems to have resolved."

The Board finds that Dr. Farber's opinion was internally inconsistent, as he concluded that "appellant is suffering from" the accepted employment-related conditions, and conclusory in nature in that the left wrist strain "seems to have resolved." Dr. Farber did not provide an opinion with sufficient medical reasoning to establish that appellant no longer had residuals or disability due to her accepted June 12, 2003 employment injury.⁸ Once OWCP undertook development of the record it was required to complete development of the record by procuring medical evidence that would resolve the relevant issue(s) in the case.⁹ As it did not request that Dr. Farber clarify his report, the Board finds that OWCP erred in relying on his opinion as the basis to terminate appellant's wage-loss compensation. The Board therefore finds that OWCP has not met its burden of proof.¹⁰

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 28, 2018.¹¹

⁷ *S.R.*, *id.*; *K.W.*, *supra* note 5; *see A.G.*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake*, *id.*

⁸ *See R.K.*, Docket No. 19-1980 (issued May 7, 2020); *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *S.B.*, Docket No. 18-0700 (issued January 9, 2019); *S.W.*, Docket No. 18-0005 (issued May 24, 2018).

⁹ *See J.F.*, Docket No. 17-1716 (issued March 1, 2018).

¹⁰ *Id.*

¹¹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 1, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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