

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

J.S., Appellant)

and)

DEPARTMENT OF THE ARMY, PUBLIC)
WORKS DEPARTMENT, NAVAL AIR)
STATION, Marietta, GA, Employer)

_____)

**Docket No. 20-0934
Issued: July 12, 2021**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 13, 2020 appellant filed a timely appeal from a September 17, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from September 17, 2019, the date of OWCP's decision, was March 15, 2020. Since using March 20, 2020, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is March 13, 2020, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective September 17, 2019, as he no longer had residuals or disability causally related to his accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 20, 2000 appellant, then a 45-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that day he sustained a deep cut to his right forearm when a piece of plate glass broke and fell on his arm while in the performance of duty. On February 9, 2001 OWCP accepted this claim for laceration of the right forearm. Appellant underwent surgical repair of the right brachioradialis tendon on February 28, 2001. He returned to work on April 9, 2001 at a different duty station.

On February 4, 2002 appellant filed an occupational disease claim (Form CA-2) alleging that he had developed carpal tunnel syndrome due to factors of his federal employment, including his new employment duties. On April 5, 2002 OWCP accepted the claim for aggravation of carpal tunnel syndrome.⁴ On October 19, 2003 appellant returned to work as a procurement technician for the Department of the Navy.

Appellant filed a second occupational disease claim (Form CA-2) for carpal tunnel syndrome on December 24, 2003. On January 9, 2004 OWCP accepted the claim for aggravation of left carpal tunnel syndrome.

By decision dated June 25, 2007, OWCP issued a formal loss of wage-earning capacity determination. It found that appellant's procurement technician position effective October 19, 2003, with wages of \$649.56 per week, fairly and reasonably represented his wage-earning capacity and was vocationally suitable. OWCP reduced his wage-loss compensation to net compensation of \$867.00 every 28 days, effective October 19, 2003.⁵

³ Docket No. 10-2093 (issued June 9, 2011); Docket No. 08-0658 (issued November 4, 2008); Docket No. 05-1391 (issued March 10, 2006).

⁴ On February 5, 2004 OWCP administratively combined appellant's claims in OWCP File Nos xxxxxx264 and xxxxxx454, with the latter serving as the mater file.

⁵ By decision dated November 15, 2007, OWCP granted appellant a schedule award for nine percent permanent impairment of the right upper extremity and four percent permanent impairment of the left upper extremity. Appellant appealed this decision to the Board and on November 4, 2008, the Board found that there was an unresolved conflict of medical opinion evidence and remanded the claim for referral to an impartial medical examiner. In its June 9, 2011 decision, the Board found that appellant had no more than nine percent permanent impairment of his right upper extremity for which he had previously received a schedule award. Docket No. 08-0658 (issued November 4, 2008).

Appellant continued to seek treatment with his attending physician. In a note dated August 1, 2011 Dr. Scott D. Gillogly, a Board-certified orthopedic surgeon, diagnosed right forearm work-related laceration with persistent brachioradialis weakness, dysesthesias, numbness involving the median nerve and cutaneous dermatome, status post brachioradialis tendon repair, and left wrist carpal tunnel syndrome documented by electromyogram and nerve conduction velocity (EMG/NCV) studies secondary to work-related overuse, intermittently symptomatic. He noted that appellant's condition was stable and that he had sought treatment due to an OWCP request. Dr. Gillogly found that there were no changes in appellant's condition or work restrictions and indicated that he would see him annually or as needed. He completed similar notes on July 26, 2012 June 28, 2013, and July 7, 2014.

On July 31, 2015 Dr. Gillogly diagnosed right forearm work-related laceration with persistent brachioradialis weakness, dysesthesias, and numbness involving the median nerve and cutaneous dermatome, and work-related left carpal tunnel syndrome. He noted that appellant continued to do well without changes or concerns. Dr. Gillogly reported that appellant was working in an office environment and that he had no acute complaints. On physical examination he found good two-point discrimination and pincher grasp as well as negative Phalen's test and Tinel's sign.

On August 5, 2015 OWCP referred appellant, a statement of accepted facts (SOAF), and a series of questions to Dr. Eric S. Furie, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding whether the appellant's condition had resolved and whether he could perform his date of injury job.

In his August 25, 2015 report, Dr. Furie noted appellant's history of injury and accepted conditions. He performed a physical examination and found no thenar wasting. Dr. Furie reported decreased sensation to light touch at the thumb as well as the region of the wrist. Sensation was intact to light touch in the small finger. He found a positive Tinel's sign and a positive Phalen's test bilaterally. Dr. Furie determined that appellant's bilateral carpal tunnel syndrome had not resolved. He further opined that appellant could perform his date-of-injury position as maintenance mechanic emergency shift, if he could avoid repetitive motion.

In June 24, 2016 CA-110 notes, appellant reported that his attending physician had retired and requested approval to see another physician.

On October 2, 2017 OWCP referred appellant, a SOAF, and a series of questions for a second opinion examination with Dr. Howard B. Krone, a Board-certified orthopedic surgeon regarding whether the appellant had and disability as the result of his accepted condition, and whether he was able to perform his date of injury job or any type of light duty.

In his October 25, 2017 report, Dr. Krone reviewed the SOAF, appellant's date-of-injury job requirements, and his medical history. He performed a physical examination and found full range of motion and strength in both wrists. Dr. Krone noted that motor power in the small joints of the hand was 5/5 and that appellant's sensory examination in both hands was normal. He found a negative Tinel's sign over the median nerve at both hands and a negative Phalen's test. Dr. Krone reported a well-healed surgical scar over the dorsal radial aspect and excellent strength of the brachial radialis. He found no evidence of brachial radialis weakness, sensory, or motor changes

in the right upper extremity. Dr. Krone concluded that appellant had no disability remaining as a result of his September 20, 2000 traumatic injury and no evidence of any objective findings on examination for carpal tunnel syndrome. He determined that appellant could perform his date-of-injury position as a maintenance mechanic. Dr. Krone completed a work capacity evaluation (Form OWCP-5c) indicating that appellant had no work restrictions.

On August 1, 2019 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because he no longer had disability or medical residuals causally related to his accepted employment injuries. It found that the weight of the medical evidence established that his work-related disability had ceased based on Dr. Krone's second opinion report. OWCP afforded appellant 30 days to submit additional evidence or argument in writing if he disagreed with the proposed termination of his wage-loss compensation and medical benefits.

On September 4, 2019 appellant submitted copies of medical records from Dr. Gillogly and Dr. James C. McIntosh, Jr., a Board-certified orthopedic surgeon, dated September 21, 2000 through February 13, 2004.

By decision dated September 17, 2019, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits effective that date, finding that the medical evidence of record failed to support continued disability or residuals related to the accepted work injuries. It relied upon the report of the second opinion physician, Dr. Krone.

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 It may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁷ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁹ 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.¹⁰

⁶ See *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).

⁷ See *R.P.*, *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁸ See *R.P.*, *supra* note 7; *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁹ See *R.P.*, *supra* note 7; *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009). *Furman G. Peake*, 41 ECAB 361, 364 (1990).

¹⁰ See *R.P.*, *supra* note 7; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake*, *id.*

ANALYSIS

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

On October 2, 2017 OWCP referred appellant for a second opinion examination with Dr. Krone.¹¹ In his October 25, 2017 medical report, Dr. Krone noted review of appellant's medical history, diagnostic testing, and findings on physical examination. He opined that appellant was no longer disabled due to the accepted work-related injury. The Board has reviewed the opinion of Dr. Krone and finds that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue in the present case.¹² His opinion is based on a proper factual and medical history and he thoroughly reviewed the SOAF and medical records.¹³ Dr. Krone provided medical rationale for his opinion by stating that appellant's physical findings including negative Tinel's sign and Phalen's test, muscle and sensory testing revealed no continuing deficits. Given the above findings, he opined that appellant's disability had ceased and he had no limitations as a result of his accepted employment injuries. Dr. Krone based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale. The Board, thus, finds that OWCP properly relied on Dr. Krone's second-opinion report in terminating his wage-loss compensation and medical benefits.¹⁴

Following the preliminary determination of termination, OWCP received copies of medical records from Drs. Gillogly and McIntosh dated September 21, 2000 through February 13, 2004. However, as these records predate the termination, they do not offer an opinion regarding appellant's residuals or disability as of September 17, 2019.¹⁵ Thus, these records from Drs. Gillogly and McIntosh are insufficient to overcome the weight accorded to Dr. Krone or create a conflict.

Thus, the Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 17, 2019, as he no longer had residuals or disability due to his accepted employment injury.

¹¹ See 20 C.F.R. § 10.320.

¹² *C.E.*, Docket No. 19-0661 (issued October 1, 2019); see also *R.W.*, Docket No. 12-0375 (issued October 28, 2013).

¹³ *M.H.*, Docket No. 17-0210 (issued July 3, 2018); *Melvina Jackson*, 38 ECAB 443 (1987).

¹⁴ *L.B.*, Docket No. 19-1380 (issued February 11, 2020); *K.W.*, Docket No. 19-1224 (issued November 15, 2019).

¹⁵ *L.V.*, Docket No. 17-1260 (issued August 1, 2018).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2021
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