

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 15, 2020, as she no longer had residuals or disability causally related to her accepted May 6, 2019 employment injury.

FACTUAL HISTORY

On May 6, 2019 appellant, then a 31-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, on that day, she injured her left thumb when handling a heavy flat bundle while in the performance of duty. She stopped work on the date of injury and has not returned to work. In an accompanying May 6, 2019 routing slip, appellant related that, on that day, she was sorting bundled mail when she felt a strain in her left thumb.

On July 12, 2019 OWCP accepted appellant's claim for left thumb sprain.

On July 16, 2020 OWCP referred appellant, together with a statement of accepted facts, the medical record, and a series of questions, to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion to determine whether she continued to suffer from residuals or disability due to her accepted work-related condition.

Dr. Sultan, in an August 4, 2020 report, reviewed appellant's history of injury and medical records. He reported normal findings on examination of her left thumb. Dr. Sultan advised that appellant did not suffer from any residuals of her accepted condition and required no further medical treatment for the employment-related condition. He further advised that she had no current or concurrent disability causally related to her May 6, 2019 employment and that she was capable of performing her date-of-injury mail handler position with no restrictions on a full-time basis. Dr. Sultan concluded that her prognosis was favorable and reiterated that she required no further medical treatment for her accepted condition. In an accompanying work capacity evaluation (Form OWCP-5c), he restated his opinion regarding appellant's work capacity.

OWCP subsequently received reports by Dr. Johnny Arnouk, an attending Board-certified orthopedic surgeon. In a July 1, 2020 return to work status report, Dr. Arnouk diagnosed left hand-thumb metacarpophalangeal (MCP) sprain and advised that appellant could return to regular-duty work or modified-duty work tentatively on September 1, 2020. In a prescription of even date, he ordered physical/occupational therapy to treat her left thumb MCP sprain. In a return to work status report dated September 9, 2020, Dr. Arnouk reiterated appellant's left thumb diagnosis and advised that she could return to regular-duty work or modified-duty work tentatively on November 1, 2020. In a November 15, 2019 Form OWCP-5c, he indicated that she was not capable of performing her usual job without restriction or working eight hours per day with physical restrictions. Dr. Arnouk listed her physical restrictions and estimated that the restrictions would need to apply until December 1, 2019.

OWCP also received occupational therapy reports dated November 12, 2019 through January 16, 2020.

By notice dated September 16, 2020, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Sultan's opinion that the May 6, 2019 accepted employment condition had ceased without residuals or disability. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

OWCP thereafter received additional medical records by Dr. Arnouk. In a September 9, 2020 progress note, Dr. Arnouk reported physical examination findings. He maintained that appellant remained symptomatic and that she would benefit from occupational therapy. Dr. Arnouk also maintained that she remained unfit to return to work at that time. He excused appellant from work tentatively until November 1, 2020. In a prescription of even date, Dr. Arnouk ordered physical/occupational therapy to treat her left hand sprain and pain. In an attending physician's request for authorization form dated July 30, 2020, he sought authorization for physical therapy treatment for appellant's left hand.

OWCP, by decision dated December 15, 2020, terminated appellant's wage-loss compensation and medical benefits effective that date, finding that the medical evidence submitted was insufficient to outweigh Dr. Sultan's opinion.

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 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.⁴ 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 must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁷

³ 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).

⁴ 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).

⁵ *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 *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).

⁷ *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.*

ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 15, 2020, as she no longer had residuals or disability causally related to her accepted May 6, 2019 employment injury.

OWCP referred appellant to Dr. Sultan for a second opinion evaluation to determine the status of her accepted condition and her work capacity. In his August 4, 2020 report, Dr. Sultan described her May 6, 2019 employment injury. He indicated that appellant's physical examination revealed no objective findings of the accepted condition. Dr. Sultan opined that she had no residuals or disability due to the accepted work-related condition, that she had no current or concurrent disability, that she could return to her full-time mail handler position with no restrictions, and that there was no need for further medical treatment.

The Board finds that OWCP properly accorded the weight of the medical evidence to Dr. Sultan. Dr. Sultan based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion. He provided a well-rationalized opinion based on medical evidence regarding the accepted condition causally related to appellant's May 6, 2019 employment injury. Accordingly, OWCP properly relied on Dr. Sultan's second opinion report in terminating appellant's wage-loss compensation and medical benefits.⁸

The Board further finds that the remaining evidence submitted prior to OWCP's termination of appellant's wage-loss compensation and medical benefits is insufficient to overcome the weight afforded to Dr. Sultan as the second opinion physician. Appellant submitted a series of reports and prescriptions dated November 15, 2019 and July 1 and 30 and September 9, 2020 from Dr. Arnouk who diagnosed left hand-thumb and left hand MCP sprain, opined that she was totally disabled from work on intermittent dates from November 15, 2019 to November 1, 2020, ordered physical therapy treatment for her left thumb and hand conditions, and set forth her physical restrictions. While Dr. Arnouk suggested that she had continuing residuals and total disability from work due to the accepted condition, he failed to support his conclusion with medical rationale.⁹ The Board has held that a medical report is of limited probative value regarding a period of disability if it does not contain medical rationale explaining how such disability was related to an accepted employment injury.¹⁰ Dr. Arnouk's reports and prescriptions are therefore of limited probative value and are insufficient to create a conflict with the opinion of Dr. Sultan.

Appellant also submitted occupational therapy reports dated November 12, 2019 through January 16, 2020. These documents do not constitute competent medical evidence because an occupational therapist is not considered a "physician" as defined under FECA. Consequently,

⁸ See *K.W., id.; N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

⁹ *V.D.*, Docket No. 19-0979 (issued February 5, 2020); *T.W.*, Docket No. 18-1573 (issued July 19, 2019); *A.G.*, Docket No. 18-0479 (issued November 7, 2018).

¹⁰ *V.D., id.; D.L.*, Docket No. 19-0900 (issued October 28, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

their medical findings and/or opinions will not suffice for purposes of establishing entitlement to compensation benefits.¹¹

The Board finds therefore that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective December 15, 2020.

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 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 and medical benefits, effective December 15, 2020, as she no longer had residuals or disability causally related to her accepted May 6, 2019 employment injury.

¹¹ Section 8101(2) of FECA provides that a physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *S.J.*, Docket No. 20-1061 (issued December 22, 2020); *J.R.*, Docket No. 19-0812 (issued September 29, 2020) (an occupational therapist is not considered a physician under FECA).

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 2021
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