

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 4, 2018, as she no longer had residuals or disability causally related to her accepted October 18, 2017 employment injury; and (2) whether appellant has met her burden of proof to establish continuing employment-related disability or residuals, on or after October 4, 2018, due to the accepted October 18, 2017 employment injury.

FACTUAL HISTORY

On October 18, 2017 appellant, then a 57-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day she sustained left hand, left knee, and back injuries when she fell on an uneven pavement while in the performance of duty. She stopped work that day. OWCP accepted the claim for left hand third metacarpal bone fracture, fracture of phalanx of left thumb, lumbar sprain, and lower back muscle, fascia, and tendon strain. It paid appellant wage-loss compensation on its supplemental rolls, as of December 4, 2017, and on its periodic rolls effective April 1, 2018.

By decision dated December 21, 2017, OWCP denied that the additional conditions of rupture of lumbar intervertebral disc, lumbar radiculopathy, and thoracic lumbar radiculopathy were causally related to the October 18, 2017 employment injury.

OWCP subsequently received an October 24, 2017 report, wherein Dr. Laura E. Ross, an osteopath and Board-certified orthopedic surgeon, noted appellant's history of injury and medical history. Dr. Ross provided an impression of nondisplaced fracture of the third metacarpal head, left hand and proximal phalanx fracture of left thumb, and lumbar sprain/strain with lumbar radiculitis. She opined that appellant was totally disabled from work. The record reflects that Dr. Ross continued to treat appellant, recommending diagnostic testing and physical/occupational therapy along with other treatment modalities.

In a May 29, 2018 report, Dr. Ross reported that appellant had been discharged from occupational therapy for her left hand, but still had left hand complaints. She also noted that appellant had complaints of worsening low back pain, which radiated down the left leg and that she had received an epidural injection and underwent a functional capacity evaluation (FCE). Dr. Ross diagnosed several nonaccepted back conditions and severe bilateral carpal tunnel syndrome. She recommended an electromyogram (EMG) study of the lower extremities and physical therapy of the lower back. Dr. Ross continued to opine that appellant was totally disabled from work.

On May 4, 2018 OWCP referred appellant to Dr. Stanley Askin, a Board-certified orthopedic surgeon, for a second opinion evaluation and opinion regarding whether appellant continued to have residuals and/or disability causally related to her accepted October 18, 2017 employment injury.

In an August 3, 2018 report, Dr. Askin reviewed a statement of accepted facts (SOAF) and the medical record. Based on appellant's clinical presentation, he opined that appellant's accepted employment-related condition had resolved without residuals and that she was capable of returning

to her date-of-injury position. Dr. Askin indicated that there were no objective findings referable to the October 18, 2017 employment injury. While appellant had slight droop of the right fifth finger distal interphalangeal (DIP) joint and a shortening of the distal phalanx of the left digit compared to the right, he indicated that those conditions had nothing to do with the employment injury. Despite appellant's complaints of left-sided low back pain, Dr. Askin found no tenderness to the touch and no evidence of muscle spasm. He noted that appellant was able to rise from a bent over position without difficulty and straight leg rising was negative on both sides. Other examination findings were reported as normal. Dr. Askin explained that appellant's complaints of pain was not an indication of a positive finding. While appellant suggested that she was unable to close the small digit against the ring digit of left, Dr. Askin indicated that it was under her control. He also reported that Phalen's test was negative on the right and positive on the left, the Tinel's test was positive at both carpal tunnels, and Finkelstein's test for de Quervain's and intersection syndrome were both negative. Dr. Askin concluded that appellant's subjective complaints were not bolstered by any objective findings. He advised that the diagnostic testing revealed age-appropriate degenerative changes in her back and that her left hand fractures were no longer present by December 28, 2017. Dr. Askin opined that there were no current diagnosis causally related to the employment injury. He advised that it was not surprising that she had fully recovered from the employment injury as she had a number of months of convalescence and treatments to address her complaints. Dr. Askin indicated that her fractures should have resolved within one to two months and they were not the sort that anticipate future degradation of her musculoskeletal system. He noted that, while lumbar strains and sprains can sometimes take longer than one to two months to resolve, there should be steady progression of improvement such that fairly normal activities should be expected to resume within a couple of months. Dr. Askin indicated that the longevity of appellant's complaints were unexpected along with the fact she had been treated with no expectation by the treating physician that she would ever stop complaining. He completed a work capacity evaluation (Form OWCP-5c), noting that maximum medical improvement had been reached and appellant was capable of performing her regular job without restrictions.

On August 14, 2018 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits based on Dr. Askin's second opinion report. It afforded appellant 30 days to submit additional evidence and argument if she disagreed with the proposed termination.

In response, appellant submitted physical therapy reports and an August 29, 2018 report, signed by a nurse practitioner.

Appellant also submitted an August 21, 2018 report, wherein Dr. Joan F. O'Shea, a Board-certified neurosurgeon, noted the history of injury and appellant's medical history. Dr. O'Shea reported that appellant was status post left thumb and third finger fracture and that appellant reported that this was "good now." She opined that appellant's degenerative disc disease at L5-S1 was exacerbated by the employment incident. Dr. O'Shea also noted that appellant had low back pain to the left buttock and left leg and a small L5-S1 herniated disc. She opined that appellant could return to light-duty work with restrictions of no lifting over 50 pounds. Dr. O'Shea recommended that appellant continue with epidural injections.

In a September 4, 2018 report, Dr. Ross indicated that appellant could return to work with restrictions due to her multiple diagnoses of L5-S1 disc protrusion, S1 nerve impingement, status post left hand nondisplaced fracture of the third metacarpal and proximal phalanx of the left thumb,

lumbar sprain and strain with left lower extremity radiculitis, and severe carpal tunnel syndrome bilaterally.

By decision dated October 3, 2018, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective October 4, 2018. It found that the weight of the medical evidence rested with Dr. Askin, the second opinion physician.

On October 24, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on February 22, 2019.

OWCP subsequently received a December 28, 2017 x-ray of the left hand, which showed osteoarthritis with chronic moderate-to-severe arthropathy second DIP joint.

Progress reports from Dr. Ross from September 2018 through February 2019 were received, which primarily addressed appellant's disability and recommended additional diagnostic testing. In a September 20, 2018 report, Dr. Ross recommended that appellant remain off work and undergo physical therapy to include work conditioning, followed by an FCE. In subsequent progress reports, she recommended full-time light duty. In her February 5, 2019 report, Dr. Ross indicated that the EMG/nerve conduction velocity (NCV) study of appellant's bilateral lower extremities showed a left L4 radiculitis. A copy of the January 22, 2019 EMG/NCV report was provided. In a May 28, 2019 report, Dr. Ross recommended that appellant work part-time limited duty.

By decision dated May 7, 2019, OWCP's hearing representative affirmed OWCP's October 3, 2018 decision. The hearing representative specifically noted that OWCP only had the burden to establish that the accepted conditions of the back sprain and phalanx fractures had resolved without residuals. The hearing representative found that there was no rationalized medical opinion from Dr. Ross, which explained that appellant remained disabled and required ongoing medical treatment due to the accepted employment injury.

Dr. Ross continued to submit progress notes. Evidence pertaining to appellant's nonaccepted back conditions was also received.

On September 24, 2019 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a September 23, 2019 report, Dr. Ross reviewed Dr. Askin's second opinion report and noted her concerns, including that Dr. Askin might not have reviewed all of the objective medical findings and might have mischaracterized other objective medical findings, such as the diagnostic testing. She explained that appellant did not have degenerative lumbar spine changes, but rather that her magnetic resonance imaging (MRI) scan showed central disc herniation adjacent to the thecal sac traversing the S1 nerve root at the L5-S1 level. Dr. Ross also indicated that appellant's complaints were consistent with the mechanism of injury of falling onto her left side.

On September 26, 2019 OWCP requested that Dr. Askin provide a supplemental opinion addressing the concerns set forth in Dr. Ross' September 23, 2019 report.

In an October 10, 2019 supplemental report, Dr. Askin reviewed Dr. Ross' September 23, 2019 medical report and found that the conclusion expressed in his August 3, 2018 report remained unchanged as Dr. Ross offered no data that caused him to arrive at a different conclusion. He indicated that he had conformed to OWCP's instruction that the SOAF was binding and that his report was based on an analysis of appellant's history, clinical examination, and the available records. Dr. Askin also advised that he was aware of the EMG finding of severe carpal tunnel bilaterally as well as her MRI scan findings.

By decision dated October 29, 2019, OWCP denied modification of its May 7, 2019 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.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 4, 2018, as she no longer had residuals or disability causally related to her accepted October 18, 2017 employment injury.

In an August 3, 2018 report, Dr. Askin, an OWCP referral physician, found that there were no objective findings referable to the October 18, 2017 employment injury. He indicated that the slight droop of the right fifth finger DIP joint and shortening of the distal phalanx of the left digit

⁴ *D.B.*, Docket No. 19-0663 (issued August 27, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *A.R.*, Docket No. 20-0335 (issued August 7, 2020); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ *V.S.*, Docket No. 19-1792 (issued August 4, 2020); *K.W.*, Docket No. 19-1224 (issued November 15, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *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).

⁸ *K.W.*, *supra* note 6; *see A.G.*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake*, *id.*

were unrelated to the employment injury. Dr. Askin found that appellant's complaints of left-sided low back pain was not supported by objective examination findings. He further found that appellant's inability to close the small digit against the ring digit of left was under her control. Dr. Askin noted that Phalen's test was negative on the right and positive on the left. Tinel's test was positive at both carpal tunnels, and Finkelstein's test for de Quervain's and intersection syndrome were both negative. Dr. Askin reported that the diagnostic testing revealed age-appropriate degenerative changes in her back and that her fractures were no longer present by December 28, 2017. He concluded that appellant's subjective complaints were not bolstered by any objective findings and that she was no longer suffering from residuals of the accepted employment conditions as they had resolved. Dr. Askin further opined that maximum medical improvement had been reached and appellant was capable of performing her regular job without restrictions. He noted that the longevity of her complaints were unexpected given the number of months of convalescence and her medical treatments. Dr. Askin advised that her fractures should have resolved within one to two months. He noted that, while lumbar strains and sprains can sometimes take longer than one to two months to resolve, there should be steady progression such that by a couple of months resumption of fairly normal activities should be expected.

Dr. Askin based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion.⁹ He provided a well-rationalized opinion based on medical evidence regarding the accepted conditions causally related to appellant's October 18, 2017 employment injury.¹⁰ Dr. Askin found no basis on which to attribute any residuals or continued disability to appellant's accepted employment-related conditions. His opinion is found to be probative evidence and reliable. The Board, thus, finds that Dr. Askin's opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted conditions of fracture of third metacarpal bone, left hand, fracture of phalanx of left thumb, a lumbar sprain, and a lumbar strain.

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. Askin as the second opinion physician. Appellant submitted an August 21, 2018 report from Dr. O'Shea, who opined that appellant could return to light-duty work with restrictions of no lifting over 50 pounds. Dr. O'Shea indicated that appellant was status post left thumb and third finger fracture, noting that appellant reported that this was "good now." However, she provided no opinion on the remaining accepted employment-related conditions. Thus, her report was insufficient to overcome the weight of the evidence as represented by Dr. Askin.

OWCP also received a September 4, 2018 report from Dr. Ross, which indicated that appellant could return to work with restrictions due to her multiple diagnoses of L5-S1 disc protrusion, S1 nerve impingement, status post left hand nondisplaced fracture of the third metacarpal and proximal phalanx of the left thumb, lumbar sprain and strain with left lower extremity radiculitis, and severe carpal tunnel syndrome bilaterally. However, Dr. Ross failed to offer an opinion addressing why appellant continued to have residuals or disability for work due to the accepted conditions from the October 18, 2017 employment injury. The Board finds that

⁹ See *B.B.*, Docket No. 18-0732 (issued March 11, 2020); *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *Melvina Jackson*, 38 ECAB 443 (1987).

¹⁰ See *A.T.*, *supra* note 7.

Dr. Ross' conclusory opinion was insufficient to establish that appellant still had residuals and disability causally related to her accepted employment injury.¹¹

Appellant also submitted an August 29, 2018 report, signed solely by a nurse practitioner and physical therapy reports. These reports do not constitute competent medical evidence because neither a nurse practitioner nor a physical therapist is considered a "physician" as defined under FECA.¹² Consequently, the medical findings and/or opinions of a nurse practitioner or physical therapist will not suffice for purposes of establishing entitlement to compensation benefits.¹³

OWCP also received diagnostic testing. The diagnostic tests offered no opinion regarding any continued disability or residuals causally related to the accepted injury. The Board has found that diagnostic tests, standing alone are, therefore, of limited probative value.¹⁴

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates a claimant's compensation benefits, the burden shifts to appellant to establish continuing disability or residuals after that date causally related to the accepted injury.¹⁵ To establish 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 causal relationship.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing employment-related disability or residuals, on or after October 4, 2018, due to the accepted October 18, 2017 employment injury.

In a September 23, 2019 report, Dr. Ross reviewed Dr. Askin's report and noted her concerns, including that Dr. Askin might not have reviewed all of the objective medical findings and might have mischaracterized other objective medical findings, such as the diagnostic testing.

¹¹ See *E.S.*, Docket No. 20-0673 (issued January 11, 2021).

¹² Section 8101(2) of FECA provides that 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); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *K.W.*, 59 ECAB 271, 279 (2007); *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); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (neither a nurse practitioner nor a physical therapist is a physician under FECA).

¹³ *Id.*

¹⁴ See *A.F.*, Docket No. 17-1514 (issued April 10, 2018); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁵ See *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *J.R.*, Docket No. 17-1352 (issued August 13, 2018).

¹⁶ *Id.*

However, she failed to provide an opinion explaining why appellant had continued disability or residuals or need for medical treatment as a result of the accepted conditions related to the employment injury. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁷ Thus, the Board finds that her report is insufficient to meet appellant's burden of proof.¹⁸

In an October 10, 2019 supplemental report, second opinion physician Dr. Askin found that the conclusion expressed in his August 3, 2018 report remained unchanged. He indicated that Dr. Ross offered no data that caused him to arrive at a different conclusion and that he was aware of the EMG finding of severe carpal tunnel bilaterally as well as her MRI scan findings. Dr. Askin advised that he had conformed to OWCP's instruction that the SOAFs was binding. He further advised that his report was based on an analysis of appellant's history, clinical examination, and the available records. The Board finds that the medical evidence of record is insufficient to overcome the weight accorded to Dr. Askin's second opinion or to create a conflict.¹⁹

As there is no medical evidence of record sufficient to establish that appellant continued to have residuals or disability on or after October 4, 2018, due to the accepted October 18, 2017 employment injury, the Board finds that she has not met her burden of proof.

On appeal counsel contends that Dr. Askin, a hand surgeon, does not treat spine injuries and does not regularly interpret lumbar MRI scan films. He argued that appellant should have been evaluated by a referee orthopedist. However, as found above, there is no conflict in the medical opinion evidence.

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 and medical benefits, effective October 4, 2018, as she no longer had residuals or disability causally related to her accepted October 18, 2017 employment injury. The Board also finds that appellant has not met her burden of proof to establish continuing employment-related

¹⁷ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁸ *M.E.*, Docket No. 18-0940 (issued June 11, 2019).

¹⁹ See *J.D.*, Docket No. 18-0101 (issued August 27, 2018); *K.E.*, Docket No. 17-1216 (issued February 22, 2018).

disability or residuals, on or after October 4, 2018, due to the accepted October 18, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 2, 2021
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