

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

D.V., Appellant)	
)	
and)	Docket No. 20-1548
)	Issued: June 3, 2021
U.S. POSTAL SERVICE, GENERAL MAIL)	
FACILITY, Fort Worth, TX, Employer)	
)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 21, 2020 appellant filed a timely appeal from a March 2, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective July 3, 2019 as he no longer had residuals or disability causally related to his accepted employment injury; and (2) whether appellant has met his burden of proof to establish continuing employment-related disability or residuals on or after July 3, 2019 due to his accepted employment injury.

FACTUAL HISTORY

On October 14, 1999 appellant, then a 32-year-old mail clerk, filed an occupational disease claim (Form CA-2) alleging that he sustained ulnar neuritis causally related to factors of his federal employment including keying, pulling and casing mail. OWCP accepted the claim for bilateral

¹ 5 U.S.C. § 8101 *et seq.*

carpal tunnel syndrome, bilateral cubital tunnel syndrome, and bilateral cervical radiculitis. It paid appellant wage-loss compensation for time lost from employment.²

By decision dated November 29, 2005, OWCP adjusted appellant's wage-loss compensation effective December 25, 2005 based on its finding that he had the capacity to earn wages in the constructed position of a tractor-trailer truck driver.

On December 4, 2013 OWCP referred appellant to Dr. James E. Butler, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated April 3, 2014, Dr. Butler recounted appellant's history of injury and appellant's current complaints of pain, numbness, tingling, and weakness in his hands. On examination he found normal sensation, a negative Tinel's sign of the elbows bilaterally, and a negative Phalen's test and Tinel's sign of the wrists bilaterally. Dr. Butler measured normal grip strength and nerve sensation. He found that appellant had no active diagnosed conditions and that his bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome, and cervical radiculitis had resolved. Dr. Butler noted that he had no neck complaints and no objective findings supporting an upper extremity condition. He advised that appellant's examination "was entirely normal with no evidence of residuals findings." Dr. Butler determined that he required no further treatment. In a work capacity evaluation (Form OWCP-5c) of even date, he found that appellant could perform his usual employment without restriction.

On April 25, 2019 OWCP notified appellant of its proposed termination of his wage-loss compensation and medical benefits as the weight of the evidence established that he had no employment-related residuals or disability due to his accepted employment injury. It afforded him 30 days to submit additional evidence or argument if he disagreed with the proposed termination. OWCP noted that appellant had not sought treatment for his employment injury since October 2, 2008.

By decision dated July 3, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits effective July 3, 2019.³ It found that Dr. Butler's April 3, 2014 opinion represented the weight of the evidence and established that he had no further disability or residuals of his accepted employment injury.

On November 8, 2019 Dr. William Lian, a physiatrist, performed an electromyogram (EMG) and nerve conduction velocity (NCV) study. He discussed appellant's complaints of chronic paresthesia in the right upper extremity after a 1999 ulnar release with intermittent hand swelling. Dr. Lian noted that he currently worked as a truck driver. On examination he found a loss of sensation in the fourth and fifth digits of the right hand and a positive Tinel's sign at the right wrist and bilateral elbows. Dr. Lian indicated that electrodiagnostic testing had yielded essentially normal findings, but had shown a "potential demyelinating, right medial sensory

² By decision dated June 11, 2002, OWCP reduced appellant's compensation to zero as his actual earnings as a modified letter carrier effective November 4, 2000 fairly and reasonably represented his wage-earning capacity. On March 3, 2004 it accepted that he had sustained a recurrence of disability.

³ OWCP indicated that it was terminating appellant's benefits effective July 3, 2010; however, it appears that this was a typographical error. It further identified the accepted conditions using the codes from the International Classification of Diseases (ICD)-9 rather than the ICD-10.

neuropathy consistent with mild carpal tunnel syndrome.” He found chronic right ulnar nerve irritation at the elbow based on appellant’s history and examination. In an addendum dated November 22, 2019, Dr. Richard C. Robinson, a physiatrist, cosigned the report and concurred with Dr. Lian’s findings.

On December 3, 2019 appellant requested reconsideration. He advised that he had to wear elbow pads to alleviate pressure on the nerve in his elbow.

By decision dated March 2, 2020, OWCP denied modification of its July 3, 2019 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination 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.⁷ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly terminated appellant’s wage-loss compensation and medical benefits effective July 3, 2019.

In an April 3, 2014 report, Dr. Butler, an OWCP referral physician, found that appellant had normal grip strength and sensation, a negative Phalen’s test, and a negative Tinel’s sign of the elbows and wrists bilaterally. He opined that the accepted conditions of bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome, and cervical radiculitis had resolved, noting that an examination had revealed no objective findings of the conditions. Dr. Butler asserted that appellant required no further medical treatment and could return to his usual employment without restrictions.

On July 3, 2019 OWCP terminated appellant’s wage-loss compensation and medical benefits based on Dr. Butler’s April 3, 2014 report.

⁴ *R.H.*, Docket No. 19-1064 (issued October 9, 2020); *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

⁵ *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁶ *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

⁷ *T.C.*, Docket No. 19-1383 (issued March 27, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

⁸ *R.P.*, Docket No. 18-0900 (issued February 5, 2019); *Pamela K. Guesford*, 53 ECAB 727 (2002).

The Board finds however, that Dr. Butler's report was not reasonably contemporaneous to the termination of appellant's wage-loss compensation and medical benefits to constitute the weight of the evidence. Dr. Butler's report was rendered more than five years prior to OWCP's decision terminating compensation and medical benefits. The Board has held that stale medical evidence cannot form the basis for a current evaluation of residuals symptomology, disability determination, or other medical determinations.⁹ Therefore, as Dr. Butler's report was not reasonably contemporaneous, OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits.¹⁰

CONCLUSION

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits effective July 3, 2019.

ORDER

IT IS HEREBY ORDERED THAT the March 2, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 3, 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

⁹ See *J.O.*, Docket No. 20-0519 (issued November 30, 2020); *B.J.*, Docket No. 18-1186 (issued July 9, 2019); *G.M.*, Docket No. 14-2057 (issued May 12, 2015). See also *Keith Hanselman*, 42 ECAB 680 (1991); *Ellen G. Trimmer*, 32 ECAB 1878 (1981) (finding that reports around two years old were invalid for determining disability and loss of wage-earning capacity).

¹⁰ In light of the Board's disposition of Issue 1, Issue 2 is moot.