

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

S.H., Appellant)	
)	
and)	Docket No. 19-1855
)	Issued: March 10, 2021
DEPARTMENT OF LABOR, OFFICE OF)	
WORKERS' COMPENSATION PROGRAMS,)	
Dallas, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 6, 2019 appellant filed a timely appeal from a July 30, 2019 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 30, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective July 30, 2019, as she no longer had disability causally related to the accepted December 2, 1999 employment injury.

FACTUAL HISTORY

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

On September 14, 2000 appellant, then a 40-year-old claims examiner, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome due to factors of her federal employment, including repetitive work duties. OWCP assigned the claim OWCP File No. xxxxxx040 and accepted it for bilateral carpal tunnel syndrome and paid wage-loss compensation benefits. Appellant stopped work on March 6, 2001. On April 24, 2001 she was released to return to work four hours per day with restrictions, and on May 7, 2001 she was released to work eight hours per day with restrictions.

On March 14, 2002 appellant filed an occupational disease claim for depression due to being forced to work outside of her medical restrictions and being unable to meet her performance standards. At the time she filed her claim, she was performing a modified position as a result of previous work-related injuries under OWCP File No. xxxxxx040. OWCP developed that claim under OWCP File No. xxxxxx176. On May 10, 2005 OWCP accepted that claim for depressive disorder. It administratively combined OWCP File Nos. xxxxxx040 and xxxxxx176.

On August 24, 2004 appellant filed a claim for an occupational disease (Form CA-2) alleging that she developed bilateral cubital tunnel syndrome, neck, bilateral shoulder, and low back pain as a result of performing repetitive duties. OWCP assigned that claim OWCP File No. xxxxxx374 and later combined it with OWCP File Nos. xxxxxx040 and xxxxxx176.

Appellant came under the treatment of Dr. Olayinka Ogunro, a Board-certified orthopedist, beginning in 2007. On December 8, 2015 Dr. Ogunro continued to treat her for bilateral hand numbness and paresthesia. He diagnosed bilateral carpal tunnel syndrome. Dr. Ogunro noted that appellant had not worked since September 5, 2001 and was capable of working with restrictions of typing no more than four hours a day. He further noted that she could use a "voice activated machine to accommodate restrictions in an eight-hour workday."

Appellant continued to receive medical treatment from Dr. Ogunro. In a report dated December 29, 2016, Dr. Ogunro noted that she still complained of numbness in her hands, but she did not wish to undergo surgical treatment. He reviewed appellant history and provided

³ Docket No. 17-0990 (issued June 12, 2018); Docket No. 08-1043 (issued April 8, 2009); Docket No. 06-1309 & 06-1153 (issued June 14, 2007); Docket No. 05-1722 (issued July 11, 2006); Docket No. 05-1623 (issued April 3, 2006); Docket No. 04-1197 (issued April 13, 2005); Docket No. 03-1592 (issued August 13, 2004); Docket No. 03-1447 (issued December 4, 2003); Docket No. 02-0127 (issued August 2, 2002).

examination findings similar to his previous reports. Dr. Ogunro diagnosed bilateral carpal tunnel syndrome. He noted that “this patient stated that [appellant] can do her work, but with a voice activated system since this will not bother her wrist.” Dr. Ogunro recommended follow-up in one year.

By letter dated February 7, 2017, OWCP proposed to reduce appellant’s compensation, based on her capacity to earn wages as a customer complaint clerk, *Dictionary of Occupational Titles* 241.367.014.

By decision dated March 13, 2017, OWCP reduced appellant’s wage-loss compensation, effective March 14, 2017, finding that appellant had 52 percent wage-earning capacity based on her capacity to earn wages as a customer complaint clerk.

On April 5, 2017 appellant appealed to the Board.

By decision dated June 12, 2018, the Board affirmed OWCP’s March 13, 2017 decision. The Board found that OWCP met its burden of proof to reduce appellant’s compensation benefits based on her capacity to earn wages in the selected position of customer complaint clerk.⁴

On January 7, 2019 OWCP requested that appellant respond to a series of questions from her physician providing objective clinical findings, test results, and medical rationale. It afforded her 30 days to submit the necessary evidence.

In a report dated January 17, 2019, Dr. Ogunro noted that appellant presented for a follow-up evaluation for bilateral carpal tunnel syndrome. He reported last seeing her in 2017 at which time she was released to work with restrictions involving data entry for four hours a day and other activities for the remaining four hours a day with the use of a voice activated system. Dr. Ogunro related that appellant’s symptoms were limited to occasional numbness and tingling in both hands. Findings on physical examination on the bilateral hands revealed negative Tinel’s sign, diminished sensation over the median distribution, and negative Phalen’s test. Dr. Ogunro advised that appellant could return to regular-duty work without restrictions.

On January 24, 2019 appellant reported that on January 17, 2019 Dr. Ogunro’s released her to work without restrictions because her accepted conditions resolved. She related that due to the change in her condition she would like to return to her date-of-injury position as an OWCP claims examiner in the Dallas district office.

On January 30, 2019 Dr. Ogunro reported last seeing appellant on September 21, 2017 for pain and numbness in the right hand due to bilateral carpal tunnel syndrome. Appellant related that her finger tips were most severely affected, but otherwise she had full use of her right hand and left hand with only occasional numbness and tingling. Dr. Ogunro diagnosed bilateral carpal tunnel syndrome and opined that it was causally related to her work due to continuous data entry throughout the working period and over several years. He found that the work-related symptoms of carpal tunnel syndrome almost completely resolved and the reason for not achieving total

⁴ *Supra* note 3.

resolution was because appellant was treated nonsurgically. Dr. Ogunro again advised that at this time she could return to work without restrictions and periodic use of the splints.

In a March 1, 2019 letter, OWCP, relying on Dr. Ogunro's January 17, 2019 report, notified appellant that it proposed to terminate her wage-loss compensation as her accepted condition had ceased without residuals. It afforded her 30 days to submit additional evidence or argument.

In a letter dated March 5, 2019, appellant responded to the proposed notice to terminate her wage-loss compensation benefits and asserted that OWCP only referenced Dr. Ogunro's January 17, 2019 report and did not mention his January 30, 2019 report. She asserted that the January 30, 2019 report was significant because it noted the diagnosed condition of bilateral carpal tunnel syndrome and addressed causal relationship noting that her symptoms have "almost" completely resolved except for occasional numbness and tingling. The report further relayed that appellant did not achieve complete resolution because she was treated nonsurgically. She indicated that the employing establishment made a job offer on November 7, 2017 and she inquired as to whether the position was still available.

By decision dated July 30, 2019, OWCP terminated appellant's wage-loss compensation, effective the same date. It found that the weight of the evidence was represented by her treating physician Dr. Ogunro.

LEGAL PRECEDENT

According to FECA,⁵ 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 OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁷ Its 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

⁵ *Supra* note 1.

⁶ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁷ *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁸ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *Del K. Rykert*, 40 ECAB 284 (1988).

⁹ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹⁰ *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation benefits, effective July 30, 2019, as she no longer had disability causally related to the accepted December 2, 1999 employment injury.

In his comprehensive reports dated January 17 and 30, 2019, Dr. Ogunro, appellant's treating physician, noted his review of the medical record and treatment of her work-related conditions. He described her work duties including continuous data entry over several years which caused her bilateral carpal tunnel syndrome. Appellant's physical examination findings included negative Tinel's sign, diminished sensation over the median distribution, and negative Phalen's test. Dr. Ogunro noted that her symptoms were only occasional numbness and tingling in both hands otherwise she had full use of her right hand and left hand. He opined that appellant had no ongoing residuals or disability as a result of the accepted bilateral carpal tunnel syndrome as the accepted conditions had resolved and she was clinically stable. Dr. Ogunro further opined that she had no physical limitations due to the accepted bilateral carpal tunnel syndrome and that she could work in a full-time, full-duty capacity. He concluded that the work-related symptoms of carpal tunnel syndrome almost completely resolved and the reason for not achieving total resolution was because appellant was treated nonsurgically. Dr. Ogunro found that she could return to work without restrictions and periodic use of the splints.

The Board finds that OWCP properly accorded the weight of medical opinion to Dr. Ogunro, appellant's treating physician, who reported that appellant no longer had residuals or disability as a result of the accepted bilateral carpal tunnel syndrome. Dr. Ogunro based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion that she did not have residuals or work limitations as a result of the employment injury. Accordingly, OWCP properly relied on his report in terminating appellant's wage-loss compensation benefits.¹¹

As the evidence of record establishes that appellant no longer has disability due to her accepted employment conditions, the Board finds that OWCP properly terminated her wage-loss compensation benefits, effective July 30, 2019.

On appeal appellant asserts that OWCP's termination decision was premature because it did not determine if the job offer was still available, there was a discrepancy as to how the medical evidence was applied, and a question as to whether the loss of wage-earning capacity decision should be recalculated. The Board finds her arguments without merit.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation benefits, effective July 30, 2019, as she no longer had disability causally related to her accepted employment injury.

¹¹ *R.B.*, Docket No. 19-0204 (issued September 6, 2019).

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 2021
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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