

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

C.M., Appellant)	
)	
and)	Docket No. 20-1647
)	Issued: October 5, 2021
DEPARTMENT OF THE ARMY,)	
INSTALLATION MANAGEMENT)	
COMMAND, Fort Carson, CO, 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
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On September 18, 2020 appellant filed a timely appeal from a June 15, 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the June 15, 2020 decision, appellant submitted additional evidence to OWCP and on appeal to the Board. 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 met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 15, 2020, as she no longer had residuals or disability causally related to her accepted employment injuries.

FACTUAL HISTORY

On August 30, 2015 appellant, then a 59-year-old human resources assistant, filed an occupational disease claim (Form CA-2) alleging that she sustained injury to her neck and upper extremities due to factors of her federal employment. She asserted that she was diagnosed with bilateral carpal tunnel syndrome in July 2015 and a degenerative neck condition in 2010. Appellant noted that she first became aware of her claimed injury on August 14, 2015 and first realized its relation to her federal employment on August 17, 2015. She did not stop work, but began working in a light-duty position.

On January 27, 2016 appellant began working six hours per day with a 15-minute break every two hours. Dr. David A. Hull, an osteopath and Board-certified family medicine specialist for the employing establishment, indicated that appellant had been diagnosed with bilateral carpal tunnel syndrome and cervical spondylosis without myelopathy.

On February 13, 2017 OWCP accepted that appellant sustained right carpal tunnel syndrome, left carpal tunnel syndrome, left median mononeuropathy, temporary aggravation of cervical spondylolisthesis at C4-5 and C5-6, and temporary aggravation of cervical radiculopathy.³

On March 15, 2018 appellant underwent right carpal tunnel release and, on April 19, 2018, she underwent left carpal tunnel release. Both procedures were authorized by OWCP. In July 2018 appellant began working four hours per day and, on August 7, 2018, OWCP expanded the accepted conditions to include right thumb tenosynovitis.⁴

In an August 10, 2018 report, Dr. Miguel J. Castrejon, a Board-certified physiatrist and occupational medicine specialist, diagnosed multilevel cervical spondylosis with electrodiagnostic evidence of left C6 radiculopathy, history of cervical rhizotomy, left carpal tunnel syndrome with subjective complaint of similar symptoms on the right, post carpal tunnel release, double crush syndrome, and chronic pain. On September 7, 2018 he listed the diagnosed conditions from his August 10, 2018 report, but added the diagnosis of right thumb stenosing tenosynovitis.

On August 27, 2018 appellant retired from the employing establishment on disability retirement. On May 23, 2019 she underwent OWCP-authorized right thumb A1 pulley release.

In July 1, and August 5 and 26, 2019 reports, Dr. Castrejon indicated that appellant complained of neck pain, which radiated into her arms, as well as right thumb pain and crepitation

³ OWCP paid appellant wage-loss compensation for disability from work on the supplemental rolls commencing January 27, 2016.

⁴ OWCP paid appellant wage-loss compensation for disability from work on the periodic rolls commencing December 9, 2018.

with motion. He advised that she had residuals of accepted employment injuries, noting that she continued with the diagnoses of cervical spondylosis with electrodiagnostic evidence of left C6 radiculopathy, left carpal tunnel syndrome, and right thumb stenosing tenosynovitis. Dr. Castrejon noted that appellant was retired, but indicated that she was restricted to light-duty work.

On September 5, 2019 OWCP referred appellant and the case record, including a current statement of accepted facts (SOAF), to Dr. Douglas C. Scott, a Board-certified occupational medicine specialist, for a second opinion examination. It requested that Dr. Scott provide an opinion regarding whether appellant had residuals or disability causally related to her accepted employment injuries.

In a September 26, 2019 report, Dr. Scott discussed appellant's factual and medical history and reported the findings of his physical examination he conducted on that date. He reported that appellant primarily complained of neck pain, which radiated into her upper extremities, but also reported bilateral hand pain and swelling in her right thumb. Dr. Scott advised that, upon examination, appellant reported tenderness over the bilateral occipital notches. Appellant had a negative Spurling's test of the cervical spine, normal grip strength, and negative Tinel's sign over the carpal tunnels of both wrists. Dr. Scott noted that appellant continued to complain of neck pain and radiation of pain into both shoulders. However, he opined that this complaint was not related to her accepted cervical condition, but rather was due to a nonwork-related condition, chronic progressive cervical neck spondylosis related to the normal aging process and aggravated by smoking. Dr. Scott noted, "[appellant] does not continue to suffer residuals of the work injury." He opined that appellant did not have physical limitations or restrictions due to the accepted employment injuries. Dr. Scott recommended that appellant avoid forward flexion or extension of the neck, maintain a proper distance between keyboard and computer monitor, and avoid cradling a telephone in the neck. In a September 26, 2019 work capacity evaluation form report (Form OWCP-5c), he provided work restrictions, which were necessitated by appellant's nonwork-related cervical condition.

On November 19, 2019 OWCP determined that there was a conflict in the medical opinion between Dr. Castrejon and Dr. Scott on the issue of whether appellant continued to have residuals or disability causally related to the accepted employment injuries. In order to resolve the conflict, it referred appellant, pursuant to section 8123(a) of FECA (5 U.S.C. § 8123(a)), to Dr. Jeffrey J. Sabin, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter. OWCP provided Dr. Sabin with a copy of the case record, a current SOAF, and a series of questions.

In a December 20, 2019 report, Dr. Sabin detailed appellant's factual and medical history and reported the findings of the physical examination he conducted on that date. He noted that appellant primarily complained of neck pain, which radiated into her upper extremities and also complained of bilateral hand pain. Dr. Sabin indicated that, upon examination, appellant exhibited normal bilateral motion of the shoulders and had negative Tinel's and Phalen's signs at both wrists. He noted that appellant reported that cervical compression caused pain in the ulnar aspects of both hands. Dr. Sabin determined that appellant's continued cervical spine complaints were unrelated to the accepted employment-related cervical conditions, temporary aggravation of spondylolisthesis/radiculopathy, but rather were a result of the natural progression of her nonwork-related degenerative cervical condition. Appellant had no residuals of the accepted bilateral carpal

tunnel conditions after undergoing bilateral carpal tunnel releases. Dr. Sabin noted that appellant's examination was negative for Tinel's and Phalen's signs and indicated that there was no pain/numbness in the radial three and a half fingers bilaterally. He advised that appellant's hand complaints upon examination were in the ulnar nerve distributions bilaterally, but indicated that an ulnar nerve condition had not been accepted as an employment injury. Dr. Sabin opined that all of appellant's accepted employment injuries had resolved and found that she had no work restrictions related to those accepted conditions. He asserted that appellant would have difficulty working overhead or repetitively lifting items weighing more than 30 pounds, but opined that these limitations were related to the "natural aging/degenerative process" and tobacco use rather than to employment-related conditions. In a December 20, 2019 Form OWCP-5c, Dr. Sabin indicated that, with respect to the accepted employment injuries, appellant could perform her regular work on a full-time basis.

In a March 6, 2020 notice, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits because she ceased to have residuals or disability causally related to her accepted employment injuries. It informed her that the proposed termination action was based on the opinion of Dr. Sabin, the impartial medical specialist. OWCP afforded appellant 30 days to submit evidence or argument challenging the proposed action.

Appellant submitted a November 18, 2019 report from Dr. Castrejon who diagnosed herniated nucleus pulposus at C5-6 with left C6 radiculopathy per electromyogram/nerve conduction velocity (EMG/NCV) testing.

In January 9, March 6, and April 1 and 28, 2020 reports, Dr. Castrejon diagnosed multilevel cervical spondylosis with electrodiagnostic evidence of left C6 radiculopathy, history of cervical rhizotomy, left carpal tunnel syndrome with subjective complaint of similar symptoms on the right, status post carpal tunnel release, double crush syndrome, chronic pain, and right thumb stenosing tenosynovitis. He noted that appellant was concerned about persistent median nerve numbness and tingling.

In an April 9, 2020 report, Dr. Anthony Nguyen, a Board-certified anesthesiologist, summarized his encounter with appellant and provided a medical history and list of symptom complaints. He advised that a magnetic resonance imaging (MRI) scan had been ordered to address the unclear pathology leading to appellant's symptoms.

Appellant submitted a May 12, 2020 MRI scan of her cervical spine, which revealed degenerative changes at the levels of C2-3 through C6-7. She also submitted copies of August 10 and September 7, 2018 reports of Dr. Castrejon, which she had previously submitted.

By decision dated June 15, 2020, OWCP terminated appellant's wage-loss compensation and medical benefits, effective June 15, 2020, as she no longer had residuals or disability causally related to her accepted employment injuries. It found that the special weight of the medical opinion evidence was represented by the thorough, well-rationalized opinion of Dr. Sabin, the impartial medical specialist.

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.⁵ 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.⁶ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁸ 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.⁹

Section 8123(a) of FECA provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."¹⁰ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹¹

ANALYSIS

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

OWCP properly determined that there was a conflict in the medical opinion evidence between Dr. Castrejon, an attending physician, and Dr. Scott, an OWCP referral physician, on the issue of whether appellant continued to have residuals or disability causally related to the accepted

⁵ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁶ *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁷ *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁸ *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).

⁹ *See A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

¹⁰ 5 U.S.C. § 8123(a).

¹¹ *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).

employment injuries. In order to resolve the conflict, it properly referred appellant, pursuant to 5 U.S.C. § 8123(a), to Dr. Sabin, for an impartial medical examination and an opinion on the issue.¹²

The Board finds that the special weight of the medical opinion evidence is represented by the thorough, well-rationalized opinion of Dr. Sabin, the impartial medical specialist selected to resolve the conflict in the medical opinion evidence.¹³ The December 20, 2019 report of Dr. Sabin establishes that appellant had no disability due to her accepted employment injuries after June 15, 2020.

In his December 20, 2019 report, Dr. Sabin determined that appellant's continued cervical spine complaints were unrelated to the accepted employment-related cervical conditions, temporary aggravation of spondylolisthesis/radiculopathy, but rather were due to the natural progression of her nonwork-related degenerative cervical condition. Appellant had no residuals of the accepted bilateral carpal tunnel conditions after undergoing bilateral carpal tunnel releases. Dr. Sabin noted that appellant's examination was negative for Tinel's and Phalen's signs and indicated that there was no pain/numbness in the radial three and a half fingers bilaterally. He advised that appellant's hand complaints upon examination were in the ulnar nerve distributions bilaterally, but indicated that an ulnar nerve condition had not been accepted as an employment injury. Dr. Sabin opined that all of appellant's accepted employment injuries had resolved and found that she had no work restrictions related to those accepted conditions. He asserted that appellant would have difficulty working overhead or repetitively lifting items weighing more than 30 pounds, but opined that these limitations were related to the "natural aging/degenerative process" which would also be affected by tobacco use rather than to employment-related conditions.

The Board has reviewed the opinion of Dr. Sabin and finds that it has reliability, probative value and convincing quality with respect to its conclusions regarding the underlying issue of continuing employment-related residuals/disability. Dr. Sabin provided a thorough factual and medical history and accurately summarized the relevant medical evidence. He provided medical rationale for his opinion by explaining that appellant's continuing medical problems were due to the nonwork-related natural progression of her preexisting degenerative disease.¹⁴

Appellant submitted additional reports of Dr. Castrejon, dated November 18, 2019, January 9, March 6, and April 1 and 28, 2020, after receiving the March 6, 2020 notice of proposed termination. These reports contained diagnoses of conditions, which had been accepted as employment-related, including left carpal tunnel syndrome and left C6 radiculopathy. However, as Dr. Castrejon was on one side of the conflict in this case, his additional reports are essentially

¹² See *supra* note 10.

¹³ See *supra* note 11.

¹⁴ See *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *Melvina Jackson*, 38 ECAB 443 (1987) (regarding the importance, when assessing medical evidence, of such factors as a physician's knowledge of the facts and medical history, and the care of analysis manifested and the medical rationale expressed in support of the physician's opinion).

duplicative of his prior reports and are insufficient to give rise to a new conflict in the medical opinion evidence regarding continuing employment-related residuals/disability.¹⁵

Appellant also submitted a May 12, 2020 MRI scan of her cervical spine and August 10 and September 7, 2018 reports of Dr. Castrejon. However, these reports did not contain an opinion that appellant had employment-related residuals around the time of OWCP's June 15, 2020 termination action and, therefore, they also would not create a new conflict in the medical opinion evidence. The Board has held that a medical report is of no probative value on a given medical matter if it does not contain an opinion on that matter.¹⁶

In an April 9, 2020 report, Dr. Nguyen summarized his encounter with appellant and provided a medical history and list of symptom complaints. He advised that an MRI scan had been ordered to address the unclear pathology leading to appellant's symptoms. This report is of no probative value on the underlying issue of the case because it does not contain an opinion regarding continuing employment-related residuals/disability. As noted, a medical report is of no probative value on a given medical matter if it does not contain an opinion on that matter.¹⁷

As the evidence of record is insufficient to overcome the special weight accorded to Dr. Sabin, the Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

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 June 15, 2020, as she no longer had residuals or disability causally related to her accepted employment injuries.

¹⁵ See *S.I.*, Docket No. 13-1880 (issued April 18, 2014); *Richard O'Brien*, 53 ECAB 234 (2001).

¹⁶ *T.H.*, Docket No. 18-0704 (issued September 6, 2018). See also *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

¹⁷ *Id.*

ORDER

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

Issued: October 5, 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