

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's medical benefits, effective July 18, 2020, as he no longer had residuals of his accepted employment-related conditions.

FACTUAL HISTORY

On September 5, 2015 appellant, then a 53-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging on that date that he sustained injuries to his lower back, right side of his face, and left knee, as well as a headache, after intervening in a struggle with a patient while in the performance of duty. OWCP accepted the claim for left shoulder sprain and lumbar strain. Appellant did not stop work and OWCP did not authorize payment of any wage-loss compensation.

On September 17, 2015 appellant was first seen by Dr. Ningning He, a Board-certified anesthesiologist and pain medicine physician, for treatment of his September 5, 2015 employment injury. Dr. He noted appellant's history of injury, symptoms, and physical examination findings. He diagnosed lumbar and cervical sprain and strain, lumbar/thoracic radiculitis, lumbar and cervical facet syndrome/spondylosis, and shoulder pain. In subsequent reports, Dr. He repeated diagnoses of lumbar and cervical sprain and stain, lumbar/thoracic radiculitis, lumbar and cervical facet syndrome/spondylosis, and shoulder pain.

On November 16, 2018 OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions, to Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the current status of appellant's accepted conditions.

In a report dated December 6, 2018, Dr. Lakin reviewed appellant's history of injury, the SOAF, and the medical record and set forth negative examination findings. He opined that the accepted left shoulder and lumbar sprains had resolved. Dr. Lakin reported excellent left shoulder and lumbar spine motion and strength and excellent lower extremity strength. As there are no active objective findings of a lumbar or left shoulder sprain, he explained that these conditions had resolved without residuals or disability. Dr. Lakin also noted that appellant had no additional conditions causally related to the accepted employment injury.

On April 10, 2019 OWCP found a conflict in the medical opinion evidence between Dr. Lakin, the second opinion physician, and Dr. He, a treating physician, as to whether appellant's current diagnosed conditions were causally related to the accepted employment injury, and whether the accepted conditions had resolved. It referred appellant, together with a SOAF, medical record, and list of questions to Dr. Dean Carlson, a Board-certified orthopedic surgeon, to resolve the conflict.⁴

In a May 9, 2019 report, Dr. Carlson discussed appellant's history of injury and his current complaints of neck, back, and left shoulder pain, and noted his review of the medical record and SOAF. He set forth findings based upon appellant's physical examination and opined that appellant had no residuals of his accepted September 5, 2005 employment injury. On examination,

⁴ The case record contains an MEO23 appointment schedule notification dated April 5, 2019, which indicates that Dr. Carlson was selected as the impartial medical examiner (IME).

Dr. Carlson found no cervical tenderness or palpable muscle spasm, no lumbar palpable muscle spasm, L4-5 diffuse tenderness on palpation, diffuse left shoulder tenderness over the deltoid muscle, and negative Neer and Hawkins signs. Regarding appellant's lumbar condition, Dr. Carlson related that appellant's L2-4 disc bulges on magnetic resonance imaging (MRI) scan were not pathological, and the L4-5 herniated disc had no corresponding L5 nerve root signs or symptoms. Regarding appellant's left shoulder, he indicated that there was no clinical step off to indicate an acromioclavicular (AC) separation. The post-traumatic AC arthrosis seen on MRI scan would be due to a more remote injury, since there were degenerative changes of the AC joint on the film during the initial examination. Dr. Carlson also reviewed appellant's cervical x-rays, which he found showed normal spacing and alignment. He related that appellant's voluntary restriction of cervical spine movement on physical examination did not indicate pathology as he had no spasm or splinting of his cervical muscles. Dr. Carlson diagnosed resolved lumbar, cervical, and shoulder strains. He concluded that he agreed with Dr. Lakin's opinion and disagreed with the opinion of Dr. He.

Dr. He, in a progress notes dated June 10, 2019, diagnosed lumbar sprain and strain, lumbar/thoracic radiculitis, lumbar facet syndrome, cervical sprain and strain, cervical radiculitis, cervical facet syndrome/spondylosis, and shoulder pain.

On December 19, 2019 OWCP issued a notice in which it proposed to terminate appellant's wage-loss compensation and medical benefits because his September 15, 2015 work-related injury had resolved without residuals or disability. It found that the special weight of medical evidence rested with the May 9, 2019 medical report of Dr. Carlson, who found that appellant no longer had any residuals causally related to his accepted lumbosacral and left shoulder strains. Based on Dr. Carlson's diagnosis of a resolved cervical strain, OWCP expanded the acceptance of the claim to include this condition. It afforded appellant 30 days to submit additional evidence or argument, in writing, if he disagreed with the proposed notice of termination.

In a letter dated February 27, 2020, appellant, through counsel, objected to the proposed notice of termination. Counsel asserted that Dr. Carlson had been improperly selected to resolve the conflict in the medical opinion evidence as the record contained no evidence of any bypass sheets.

By decision dated July 17, 2020, OWCP finalized the notice of proposed termination of appellant's wage-loss compensation and medical benefits, effective July 18, 2020. It found that the special weight of medical evidence rested with the opinion of Dr. Carlson, the IME, who concluded in his May 9, 2019 report that appellant had no disability or residuals due to his accepted September 5, 2015 work-related injury. OWCP also found that the referee selection process was proper as Dr. Carlson was the first physician selected by the medical management application (MMA) system.

On August 3, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 14, 2020.

By decision dated December 29, 2020, the hearing representative modified the July 17, 2020 decision to find that only entitlement to medical treatment was terminated.

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

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ 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.⁷

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."⁸ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME 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.⁹

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's medical benefits, effective July 18, 2020, as he no longer had residuals of his accepted employment-related conditions.

OWCP properly determined that a conflict in medical opinion evidence arose between Dr. He, appellant's treating physician, and Dr. Lakin, an OWCP referral physician, regarding whether the accepted left shoulder and lumbar conditions had resolved. It referred him to Dr. Carlson for an impartial medical examination, pursuant to 5 U.S.C. § 8123(a).

The Board finds that the special weight of the evidence is represented by the thorough and well-rationalized opinion of Dr. Carlson, the IME selected to resolve the conflict in medical opinion.¹⁰ In a May 9, 2019 report, Dr. Carlson discussed appellant's complaints of neck, back, and left shoulder pain, reviewed his history of injury, and analyzed the medical evidence of record. He found no cervical tenderness or palpable muscle spasm, no lumbar palpable muscle spasm, L4-5 diffuse tenderness on palpation, diffuse left shoulder tenderness over the deltoid muscle, and negative Neer and Hawkins signs. Dr. Carlson noted that appellant's left shoulder and cervical

⁵ *R.V.*, Docket No. 20-00005 (issued December 8, 2020); *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 *R.V.*, *id.*; *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

⁷ *R.V.*, *id.*; *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

⁸ 5 U.S.C. § 8123(a).

⁹ *D.G.*, *supra* note 5; *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).

¹⁰ *M.L.*, Docket No. 20-1682 (issued June 24, 2021); *R.P.*, Docket No. 19-0057 (issued May 16, 2019); *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

x-rays revealed normal findings. He opined that appellant's cervical, lumbar, and left shoulder strains had resolved based on the lack of objective findings on examination. Dr. Carlson provided a thorough factual and medical history and accurately summarized the relevant medical evidence.¹¹ He provided rationale for his opinion by explaining that appellant's findings on examination were within normal limits and that the diagnostic studies showed no abnormalities, causally related to the accepted injury. Dr. Carlson's opinion, thus, represents the special weight of the evidence and establishes that he had no further residuals causally related to his September 5, 2015 employment injury.¹²

The additional evidence submitted subsequent to Dr. Carlson's May 9, 2019 report, but prior to OWCP's termination of appellant's compensation, is insufficient to overcome the special weight accorded to Dr. Carlson as the IME.

Appellant submitted June 10, 2019 progress reports from Dr. He, who opined that appellant continued to suffer from residuals of the September 5, 2015 employment injury. However, Dr. He was on one side of the conflict regarding whether appellant had continued residuals. Reports from a physician who was on one side of a medical conflict resolved by an IME are insufficient to overcome the special weight accorded to the opinion of the IME.¹³

The Board, therefore, finds that OWCP properly terminated appellant's medical benefits, effective July 18, 2020, as he no longer had residuals causally related to his accepted September 5, 2015 employment injury.

On appeal, counsel asserts that the IME selection process was flawed and unexplained, as there were no bypass reports of record. He has presented no evidence to support his assertion. OWCP addressed this assertion noting that Dr. Carlson was the first physician selected and, thus, no bypass sheets were created. It uses the MMA with a strict rotational feature to select an IME.¹⁴ The record contains an April 5, 2019 MEO23 report. As there is no evidence that OWCP bypassed physicians before selecting Dr. Carlson as the IME, the Board finds that OWCP provided sufficient documentation to establish that it properly utilized its MMA system in selecting Dr. Carlson.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's medical benefits, effective July 18, 2020, as he no longer had residuals of his accepted employment-related conditions.

¹¹ *M.L., id.; M.R.*, Docket No. 19-0518 (issued September 12, 2019); *A.G.*, Docket No. 19-0113 (issued July 12, 2019).

¹² *M.L., id.; A.M.*, Docket No. 18-1243 (issued October 7, 2019); *J.K.*, Docket No. 18-1250 (issued June 25, 2019).

¹³ *D.G.*, *supra* note 5; *I.J.*, 59 ECAB 408 (2008).

¹⁴ *H.W.*, Docket No. 14-1319 (issued February 3, 2015); Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.5(i) (May 2013). "The ME023, Appointment Notification Report, can only be generated through the [MMA] and serves as documentary evidence that the appointment was scheduled through the use of the rotational system in the [MMA]. The medical scheduler should image a copy of the ME023 report into the case file to substantiate that the rotational system was used to select the physician."

ORDER

IT IS HEREBY ORDERED THAT the December 29, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2022
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