

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 29, 2019; and (2) whether appellant has met his burden of proof to establish continuing employment-related disability or residuals on or after October 29, 2019 due to his accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 14, 2012 appellant, then a 58-year-old group leader custodian, filed a traumatic injury claim (Form CA-1) alleging that on August 13, 2012 he injured his left arm when holding/pushing a battery to prevent it from falling while in the performance of duty. OWCP accepted the claim for left elbow and forearm sprain, left radial collateral ligament and sprain of shoulder, left rotator cuff, superior labrum anterior and posterior (SLAP) lesion of the left shoulder and left shoulder biceps tendinitis. It paid appellant wage-loss compensation on the supplemental rolls, commencing January 11, 2013 and on the periodic rolls commencing March 6, 2016.

On March 14, 2019 OWCP referred appellant to Dr. WeiChin Chen, a Board-certified orthopedic surgeon, for a second opinion examination. It requested that he evaluate whether appellant continued to have residuals and/or disability causally related to appellant's accepted August 13, 2012 employment injury.

In a May 16, 2019 report, Dr. Chen indicated that he had reviewed a statement of accepted facts and appellant's medical records, including diagnostic studies. He reported physical examination findings and assessed left upper extremity ulnar nerve lesion consistent with clinical signs of cubital tunnel syndrome, nonindustrial related. Dr. Chen opined that the accepted left elbow sprain, which included radial collateral ligament, had resolved as there was no objective evidence that it was still active or causing symptoms. He indicated that the left elbow had stable examination with varus and valgus stress at 0 to 30 degrees with no pain with extensor indicis proprius testing or resisted wrist extension. There were also no residuals of a radial collateral ligament sprain causing instability. Regarding the left shoulder strain, Dr. Chen noted that on May 13, 2015 appellant underwent a surgical procedure by Dr. Gary Okamura, a Board-certified orthopedic surgeon, who found anterior capsular tearing that was subsequently debridged. Appellant's July 9, 2015 repeat magnetic resonance imaging (MRI) scan did not show any persistent sprain of the anterior capsule. Thus, Dr. Chen opined that this and the fact that there was no anterior instability of the left shoulder on clinical examination indicated that the condition had resolved. Regarding appellant's left shoulder rotator cuff tear and biceps tendinitis, he found that appellant had undergone an open biceps tenodesis by Dr. Okamura on May 13, 2015, which addressed and resolved both the superior labral tear and the long head of biceps tendinitis. Dr. Chen noted that Dr. Okamura indicated in his May 13, 2015 report that the anterior rotator cuff had some undersurface tear of rotator cuff tendon, but overall it looked normal. He reported that a July 9, 2016 repeat MRI scan did not find any rotator cuff tears, only tendinosis, for which no treatment was recommended. Thus, Dr. Chen found that the rotator cuff torn tendon was

⁴ Docket No. 19-1197 (issued January 8, 2020).

debrided and had resolved with findings of degenerative changes that were not employment related.

Dr. Chen also noted that a September 29, 2015 report from Dr. Richard Kimura, a Board-certified orthopedic surgeon and OWCP second opinion physician, indicated findings of partial tear of common flexor tendon, tendinopathy of extensor tendon of the left elbow. He indicated, however, that during his examination of the left elbow, appellant's complaints were along the cubital tunnel region and not the lateral epicondylar region, which was consistent with resolution of that complaint. In addition, Dr. Chen indicated that appellant did not have any pain with resisted distal interphalangeal predominant (DIP) or wrist extension on the left wrist to indicate active lateral epicondylitis. He further opined, based on a review of the medical records and appellant's examination, that appellant's accepted left shoulder and left elbow conditions had resolved and appellant was able to return to full duty as a Group Leader Custodian without restrictions.

An August 5, 2019 x-ray of appellant's left shoulder revealed mild glenohumeral joint osteoarthritis.

On August 20, 2019 OWCP issued a notice advising appellant that it proposed to terminate his wage-loss compensation and medical benefits because he ceased to have residuals/disability causally related to his accepted August 13, 2012 employment injury. It advised appellant that the proposed action was based on the opinion of Dr. Chen and afforded appellant's 30 days to submit additional evidence or argument challenging the proposed action.

OWCP received a duplicate copy of the August 5, 2019 left shoulder x-ray and several progress reports from Dr. Okamura, dated October 5, 2018 and May 20, and August 5, 2019, which noted, in addition to appellant's left shoulder complaints, that appellant had undergone right shoulder arthroscopy, SLAP repair and capsulorrhaphy repair on February 8, 2018.⁵

In an October 5, 2018 report, Dr. Okamura reported slightly positive impingement signs and Hawkins and Neer's tests for both shoulders. Left shoulder assessments were other specific postprocedural states and other shoulder lesions.

In his May 20, 2019 report, Dr. Okamura noted that appellant reported that his left shoulder bothered him more than the right shoulder and that he was in physical therapy for both shoulders. With regard to the left shoulder, he assessed pain in the left shoulder and postprocedural state. Dr. Okamura recommended that physical therapy be continued and requested an x-ray of the left shoulder. Appellant underwent a left shoulder x-ray on August 5, 2019.

In an August 5, 2019 report, Dr. Okamura indicated that left shoulder x-ray revealed arthritis. He provided an assessment of left shoulder pain and left elbow pain and recommended injections due to appellant's persistent symptoms of pain in both shoulders and left elbow. Dr. Okamura opined that appellant could not work at medium level, but probably could work more of a sedentary or desk work level.

In a September 23, 2019 report, Dr. Okamura reported that appellant was seen for left shoulder pain and numbness status post left shoulder surgery of May 13, 2015. Examination findings revealed pain with impingement signs, positive Hawkins and Neer's tests, and pain in the

⁵ The record reflects appellant was seen for right shoulder symptoms in 2017 and 2019.

supraspinatus tendon. Dr. Okamura provided an assessment of left shoulder pain, other specified postprocedural states, superior glenoid labrum lesion of left shoulder, and strain of muscle, fascia and tendon of long head of left arm biceps. He disagreed that appellant could work full duty without restrictions as appellant's job required a lot of overhead work and appellant had stiffness in overhead position and pain reproduced with his shoulder. Dr. Okamura requested that appellant undergo a functional capacity evaluation.

On September 23, 2019 OWCP requested that Dr. Chen review Dr. Okamura's reports and provide a supplemental report clarifying whether the accepted left shoulder SLAP tear and tendinitis were resolved and whether any further medical treatment is required.

In a September 27, 2019 supplemental report, Dr. Chen noted that the August 5, 2019 left shoulder x-ray revealed mild glenohumeral joint osteoarthritis. He indicated that osteoarthritis was a degenerative process not part of the accepted condition. Dr. Chen further noted that appellant has mild-to-moderate acromioclavicular (AC) joint arthropathy, which was arthritis of the AC joint and not industrial related. He opined that, although appellant's accepted conditions had resolved, appellant's subjective pain may be medical sequela of his surgical management, but did not require further medical curative treatment. Dr. Chen reiterated his opinion that appellant's accepted conditions had resolved based on the May 13, 2015 surgical procedure.

By decision dated October 29, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical evidence was represented by Dr. Chen's reports.

On November 5, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on February 20, 2020.

In a February 27, 2020 report, Dr. Okamura noted evidence of AC joint arthritis and rotator cuff tendinitis. He recommended further x-rays and an MRI scan.

OWCP subsequently received additional evidence. In a February 12, 2020 letter, Dr. Wray Tsuzai, a Board-certified internist, indicated that he was appellant's treating physician for the bilateral shoulder conditions. He opined that appellant reached maximum medical improvement (MMI) and that appellant's current physical abilities prevented him from ever returning to work. In a February 3, 2020 report, Dr. Tsuzai indicated that appellant had reached MMI on October 11, 2019.

By decision dated May 4, 2020, OWCP's hearing representative affirmed the October 29, 2019 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.⁶ It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment

⁶ *S.P.*, Docket No. 19-0196 (issued June 24, 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).

injury.⁷ OWCP's burden of proof in terminating compensation 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 to compensation for disability.⁹ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 29, 2019.

In a May 16, 2019 report, Dr. Chen, an OWCP second opinion physician, opined that appellant's accepted left elbow and left shoulder strains had resolved. He found no evidence of a rotator cuff tendon tear, noting that the July 9, 2016 repeat MRI scan did not show any persistent sprain of the anterior capsule and did not show any rotator cuff tears, only tendinosis. Dr. Chen indicated that his physical evaluation revealed no anterior instability, which confirmed that the condition was resolved. He also noted that appellant's open biceps tendinosis surgery on May 13, 2015 had resolved the SLAP tear and biceps tendinitis. Dr. Chen further noted that Dr. Okamura had indicated, in his May 13, 2015 report, that the anterior rotator cuff had some undersurface tear of rotator cuff tendon, but overall it looked normal. Based on these findings, Dr. Chen, thus, opined that the rotator cuff torn tendon was debridged and had resolved with findings of degenerative changes that were not employment related. He also indicated that, during his examination of the left elbow, there were no findings to indicate any active lateral epicondylitis and appellant's complaints were along the cubital tunnel region and not the lateral epicondylar region, which was consistent with resolution of that complaint. Dr. Chen further opined, based on a review of the medical records and appellant's examination, that appellant was able to perform the regular duties of a Group Leader Custodian without restrictions.

In a supplemental report dated September 27, 2019, Dr. Chen reviewed Dr. Okamura's reports and reiterated his opinion that appellant's accepted conditions had resolved based on the May 13, 2015 surgical procedure. He opined that appellant's mild glenohumeral joint osteoarthritis was a degenerative process not part of the accepted condition and the mild-to-moderate AC joint arthropathy, which was arthritis of the AC joint, was not industrial related.

The Board finds that Dr. Chen's reports, when read together, represent the weight of the medical evidence at the time OWCP terminated appellant's wage-loss and medical benefits, effective October 29, 2019, and that OWCP properly relied on his reports in carrying out its

⁷ See *S.P., id.*; *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).

⁸ *D.G., supra* note 6; *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 29596 (1988).

⁹ *S.P., supra* note 6; *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

¹⁰ *D.G., supra* note 6; *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

termination action. The Board finds that he had full knowledge of the relevant facts and evaluated the course of appellant's accepted work-related left shoulder conditions. Dr. Chen's opinion is based on proper factual and medical history and his report contained a detailed summary of this history. He addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's conditions.¹¹ Dr. Chen found no basis on which to attribute any residuals or continued disability to appellant's accepted conditions. His opinion is found to be probative evidence and reliable. The Board finds that Dr. Chen's opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted conditions of left elbow and forearm sprain, left radial collateral ligament and sprain of shoulder, left rotator cuff, slap lesion of the left shoulder, and left shoulder biceps tendinitis.¹²

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. Chen as the second opinion physician. Appellant submitted reports from Dr. Okamura dated October 5, 2018 through September 23, 2019. Dr. Okamura indicated that appellant still had left shoulder pain. In his August 5, 2019 report, he reported that left shoulder x-ray revealed arthritis. Dr. Okamura provided an assessment of left shoulder pain and left elbow pain and indicated that appellant was a candidate for injections due to his persistent symptoms of pain in both shoulders and left elbow. He also opined that appellant could not work at medium level, but probably could work more of a sedentary or desk work level. Dr. Okamura, however, did not explain with rationale how/why appellant continued to have residuals/disability causally related to the accepted August 13, 2012 employment injury. In his other reports, Dr. Okamura assessed left shoulder pain, other specified post procedural states, superior glenoid labrum lesion of left shoulder, and strain of muscle, fascia and tendon of long head of left arm biceps and noted positive impingement signs and positive Hawkins and Neer's tests. However, Dr. Okamura did not offer a rationalized opinion as to whether appellant's conditions were causally related to the accepted employment injury. The Board has held that a medical report is of limited probative value on a given medical issue if it contains a medical opinion which is unsupported by medical rationale.¹³ As noted, Dr. Chen reviewed Dr. Okamura's reports and provided a well-rationalized opinion in his September 27, 2019 supplemental report as to why appellant no longer had residuals or disability causally related to the accepted conditions.

As Dr. Chen's opinion constitutes the weight of the medical evidence, the Board finds that OWCP met its burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminated compensation benefits, the burden shifts to appellant to establish continuing disability after that date causally related to the accepted injury.¹⁴ To establish causal relationship between the accepted conditions as well as any attendant disability claimed and

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

¹² See *B.B.*, Docket No. 18-0732 (issued March 11, 2020).

¹³ See *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *M.H.*, Docket No. 17-0210 (issued June 3, 2018).

¹⁴ See *J.N.*, Docket No. 20-1030 (issued November 20, 2020); *L.C.*, Docket No. 18-1759 (issued June 26, 2019); *S.M.*, Docket No. 18-0673 (issued January 25, 2019).

the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such causal relationship.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish continuing employment-related disability or residuals on or after October 29, 2019 due to his accepted employment injury.

In his February 27, 2020 report, Dr. Okamura found evidence of AC joint arthritis and rotator cuff tendinitis. However, he did not offer a rationalized opinion as to whether appellant's conditions were causally related to the accepted employment injury. The Board has held that a medical report is of limited probative value on a given medical issue if it contains a medical opinion, which is unsupported by medical rationale.¹⁶ Thus, this report is insufficient to cause conflict with Dr. Chen's well-rationalized opinion as to why appellant's AC joint arthritis was a degenerative conditions and not industrial related.

Dr. Tsuzai submitted reports dated February 3 and 12, 2020, which noted that appellant reached maximum medical improvement for appellant's "shoulder" and that his current physical abilities prevent him from returning to work. He, however, does not specify which shoulder reached maximum medical improvement. Additionally, Dr. Tsuzai fails to offer a rationalized opinion as to whether appellant's inability to work is causally related to the accepted employment injury or conditions.¹⁷ Thus, his reports are of limited probative value and are of insufficient to cause conflict with Dr. Chen's well-rationalized opinion that the accepted conditions had resolved with no residuals or disability.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 29, 2019. The Board further finds that he

¹⁵ *Id.*

¹⁶ *See L.S.*, Docket No. 19-0959 (issued September 24, 2019); *M.H.*, Docket No. 17-0210 (issued June 3, 2018).

¹⁷ *See A.T.*, Docket No. 20-0334 (issued October 8, 2020).

has not met his burden of proof to establish continuing employment-related disability or residuals on or after October 29, 2019 due to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 28, 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