

² 5 U.S.C. § 8101 *et seq.*

had disability or residuals causally related to his accepted January 11, 1997 employment injury; and (2) whether appellant has met his burden of proof to establish continuing disability or residuals on or after October 10, 2020 causally related to his accepted January 11, 1997 employment injury.

FACTUAL HISTORY

On January 21, 1997 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 11, 1997 he sustained injury to his right knee when the brake pedal snapped on his postal vehicle causing his right knee to jam against the steering column while in the performance of duty. He stopped work on January 13, 1997 and returned to limited-duty work on January 15, 1997. OWCP assigned the claim OWCP File No. xxxxxx770 and accepted it for contusion, sprain, and medial meniscus tear of the right knee.³ Appellant underwent OWCP-authorized right knee medial meniscectomy shortly after the January 11, 1997 incident. OWCP paid appellant wage-loss compensation for partial disability from work on the periodic rolls commencing June 16, 2002. Appellant last worked for the employing establishment in November 2007 and OWCP paid him wage-loss compensation for total disability after he stopped work.

In a January 16, 2019 report, Dr. Eial Faierman, a Board-certified orthopedic surgeon, indicated that appellant complained of pain in his neck, low back, and knees. He noted that, upon physical examination, appellant had active range of motion of the knees to 90 degrees and there was full stability of the knees to anterior drawer, Lachman, and pivot shift tests. There was no pain or instability on varus or valgus stress testing and moderate joint line tenderness of the knees was observed. Dr. Faierman diagnosed cervical and lumbar spine strains, and internal derangement of both knees.

In a March 19, 2020 attending physician's report (Form CA-20), Dr. Amanda Mohabir, a Board-certified family medicine physician, reported the history of the employment injury noting an injury to the neck, back, and knee that occurred when appellant was driving a truck without brakes and hit a cement support column. She listed the diagnoses due to the reported employment activity as lumbar pain and cervical radiculopathy. Dr. Mohabir opined that appellant was totally disabled from January 11, 1997 to the present.

On April 8, 2020 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a series of questions, for a second opinion examination and evaluation to Dr. Stanley Askin, a Board-certified orthopedic surgeon. It requested that he provide an opinion regarding whether appellant continued to have disability or residuals causally related to his January 11, 1997 employment injury.

In a June 5, 2020 report, Dr. Askin discussed appellant's factual and medical history, noting that on January 11, 1997 the brake on his postal vehicle popped up and he hit his right knee on the steering column. He indicated that, at the time of the injury, appellant was morbidly obese.

³ Appellant later filed a traumatic injury claim alleging that on October 9, 1997 he sustained injury to his left knee, right ankle, back, and wrists when he shifted his weight while boxing mail. However, OWCP denied this traumatic injury claim. It administratively combined OWCP File No. xxxxxx483 and OWCP File No. xxxxxx770, designating the latter as the master file.

Dr. Askin reported the findings of the physical examination he conducted on June 5, 2020, noting that appellant presented in a motorized wheelchair and complained of “degeneration” in his neck, left shoulder, back, and knees. Dr. Askin indicated that, during the examination, appellant was unable to stand from his wheelchair. Straight leg raising was performed while seated and was not associated by him with discomfort for either lower extremity. Dr. Askin indicated that appellant reported that it hurt everywhere he touched his lower extremities. He reported that muscle function of the hip abductors, hip adductors, hip flexors, hip extensors, quadriceps, hamstrings, ankle and toe motors were intact, but he noted that appellant “was not a very strong individual.” Calf circumferences were 38.5 centimeters equally, but some of the calf circumferences were due to substantial edema pitting rather than muscle bulk of the lower extremities. Dr. Askin noted that appellant reported discomfort in both knees. Right knee motion was permitted from 0 degrees to 90 degrees with tenderness at the right knee medial joint line, and left knee motion was permitted from 10 degrees to 80 degrees with tenderness of the left knee at the lateral joint line.

Dr. Askin opined that appellant ceased to have residuals of the accepted conditions related to the January 11, 1997 employment injury, *i.e.*, contusion, sprain, and medial meniscus tear of the right knee. He explained that appellant’s current presentation did not manifest any residue of the accepted conditions. Dr. Askin indicated that the accepted conditions had sufficiently healed for appellant to return to full duty on a full-time basis, but he noted that appellant had “substantial general health issue[s] that would be otherwise prohibitive.” Appellant did not have disability imposed by the accepted conditions and there were no objective findings that supported “a perception or allegation that his accepted conditions have persisted.” Dr. Askin indicated that appellant had been troubled by nonwork-related complications of obesity and tobacco abuse that had detracted from his capacity for physical exertion. He noted that appellant had also suffered from diabetes and heart disease and indicated, “I do not doubt that there was an injury that occurred in 1997 but that has not left him with any residue that is preclusive of resumption of his date-of-injury employment.” Dr. Askin reiterated that appellant did not have any disability related to the January 11, 1997 employment injury and noted that he did not have any residue of the conditions accepted in the SOAF for which medical treatment was reasonable, necessary, or appropriate.

Appellant requested expansion of the acceptance of his claim to include back and cervical conditions sustained on January 11, 1997. By decision dated August 11, 2020, OWCP denied his expansion claim, noting that appellant failed to submit medical evidence with a rationalized medical opinion relating any medical condition, other than the accepted right knee conditions, to the January 11, 1997 employment injury.⁴

In an August 13, 2020 notice, OWCP advised appellant that it proposed to terminate his wage-loss compensation benefits and medical benefits as he no longer had disability or residuals causally related to his accepted January 11, 1997 employment injury. It informed him that the proposed termination action was justified by the June 5, 2020 opinion of Dr. Askin, the OWCP referral physician. OWCP afforded appellant 30 days to submit evidence and argument challenging the proposed termination action.

⁴ The Board notes that the issue of the denial of appellant’s expansion claim is not presently before the Board.

Appellant submitted an August 20, 2020 report from Dr. Faierman who indicated that appellant presented for a routine follow-up visit complaining of continued pain in his neck, lower back, and knees. Dr. Faierman advised that appellant used a rollator and had not been working. He noted that, upon physical examination, appellant had active range of motion of the knees to 80 degrees and there was full stability of the knees to anterior drawer, Lachman, and pivot shift tests. There was no pain or instability on varus or valgus stress testing and moderate joint line tenderness of the knees was observed. Dr. Faierman diagnosed cervical and lumbar spine strains, and internal derangement of both knees.

By decision dated October 9, 2020, OWCP terminated appellant's wage-loss compensation and medical benefits, effective October 10, 2020, as he no longer had disability or residuals causally related to his accepted January 11, 1997 employment injury. It found that the weight of the medical evidence with respect to continuing work-related disability or residuals rested with the opinion of Dr. Askin.

On May 29, 2021 appellant, through counsel, requested reconsideration of his claim. He submitted a March 24, 2021 report from Dr. Faierman who provided a discussion of the January 11, 1997 accident, noting that appellant reported he was driving a mail carrier truck when the brakes on the truck malfunctioned. Appellant further indicated that the brakes kicked back, causing him to strike his right knee against the steering wheel and then to hit a cement column to avoid hitting pedestrians. Dr. Faierman discussed his physical examination findings and diagnosed: post-traumatic cervical spondylosis at C4-5, C5-6, and C6-7; post-traumatic lumbar spondylosis at L4-5 and L5-S1; right knee post-traumatic degenerative changes status post right knee medial meniscectomy; and post-traumatic left knee degenerative changes. He maintained that, if the history of injury was accurate, there was a causal relationship between the January 11, 1997 incident and the injuries to appellant's cervical spine, lumbar spine, and bilateral knees. Dr. Faierman noted that appellant advised that he suffered a "recurrent work injury" when he fell at work on an unspecified date due to instability in his knees and aggravated his cervical spine, lumbar spine, and bilateral knees. He opined that, based on the history, clinical examination and medical records reviewed, there was a causal relationship between the January 11, 1997 incident and the injuries to the cervical spine, lumbar spine, and bilateral knees, as well as with the "recurrent injury" at work, which aggravated the cervical spine, lumbar spine, and bilateral knees. Dr. Faierman found that appellant was totally disabled and noted that, during the last several years, he had required a rolling walker and occasionally a wheelchair.

By decision dated August 27, 2021, OWCP denied modification of its October 9, 2020 decision. It found that the termination of appellant's compensation was proper and that appellant failed to meet his burden of proof to establish disability and residuals on or after October 10, 2020 causally related to the accepted January 11, 1997 employment injury.

LEGAL PRECEDENT -- ISSUE 1

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

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).

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 Its 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

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation benefits and medical benefits, effective October 10, 2020, as he no longer had disability or residuals causally related to his accepted January 11, 1997 employment injury.

The weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Askin, OWCP's referral physician. The June 5, 2020 report of Dr. Askin establishes that appellant had no disability or residuals due to his accepted January 11, 1997 employment injury after October 10, 2020.

In his June 5, 2020 report, Dr. Askin discussed appellant's factual and medical history, noting that on January 11, 1997 the brake on his postal vehicle popped up and he hit his right knee on the steering column. He reported the findings of the physical examination he conducted on June 5, 2020, noting that appellant presented in a motorized wheelchair and complained of "degeneration" in his neck, left shoulder, back, and knees. Dr. Askin indicated that, during the examination, appellant was unable to stand from his wheelchair. Straight leg raising was performed while seated and was not associated by him with discomfort for either lower extremity. Right knee motion was permitted from 0 degrees to 90 degrees with was tenderness at the right knee medial joint line, and left knee motion was permitted from 10 degrees to 80 degrees with tenderness of the left knee at the lateral joint line. Dr. Askin opined that appellant ceased to have residuals of the accepted conditions related to the January 11, 1997 employment injury, *i.e.*, contusion, sprain, and medial meniscus tear of the right knee. He explained that appellant's current presentation did not manifest any residue of the accepted conditions. Dr. Askin indicated that the accepted conditions had sufficiently healed for appellant to return to full duty on a full-time basis, but he noted that appellant had "substantial general health issue[s] that would be otherwise prohibitive." He indicated that appellant had been troubled by nonwork-related complications of obesity and tobacco abuse that had detracted from his capacity for physical exertion. Dr. Askin

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).

noted that appellant had also suffered from diabetes and heart disease and indicated, “I do not doubt that there was an injury that occurred in 1997 but that has not left him with any residue that is preclusive of resumption of his date-of-injury employment.”

The Board has reviewed the opinion of Dr. Askin and finds that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of continuing work-related residuals and disability. Dr. Askin 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 did not exhibit objective findings of the right knee conditions he sustained on January 11, 1997.¹⁰

The case record contains a March 19, 2020 Form CA-20 report from Dr. Mohabir who reported the history of the employment injury, noting an injury to the neck, back, and knee that occurred when appellant was driving a motor vehicle without brakes and hit a cement support column. Dr. Mohabir listed the diagnoses due to the reported employment activity as lumbar pain and cervical radiculopathy. She found that appellant was totally disabled from January 11, 1997 to the present.

The Board finds, however, that Dr. Mohabir’s March 19, 2020 report is of limited probative value regarding continuing residuals/disability causally related the accepted January 11, 1997 employment injury. Dr. Mohabir’s report is not based a complete and accurate factual history as she described a mechanism of injury, *i.e.*, hitting a cement support column on January 11, 1997, that is not supported by the factual evidence of record.¹¹ She did not provide a rationalized medical opinion relating appellant’s condition to the accepted employment injury. The Board notes that OWCP has not accepted that appellant sustained a neck or back condition on January 11, 1997 and Dr. Mohabir’s report does not otherwise support such a finding. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹²

Prior to the termination of his compensation, appellant also submitted an August 20, 2020 report in which Dr. Faierman indicated that appellant presented for a routine follow-up visit complaining of continued pain in his neck, lower back, and knees. He reported the findings of his physical examination of appellant and diagnosed cervical and lumbar spine strains, and internal derangement of both knees. The Board finds that this report is of no probative value regarding whether appellant had continuing residuals and disability related to the January 11, 1997 employment injury as Dr. Faierman did not provide an opinion on the cause of the disability. The

¹⁰ 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).

¹¹ See *supra* note 7.

¹² See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹³

As the evidence of record is insufficient to overcome the weight of the medical evidence accorded to Dr. Askin, the Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective October 10, 2020.

LEGAL PRECEDENT -- ISSUE 2

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing disability or residuals after that date, causally related to the accepted employment injury.¹⁴ To establish causal relationship between the condition as well as any attendant disability claimed and 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 disability or residuals on or after October 10, 2020 causally related to his accepted January 11, 1997 employment injury.

Following the termination of his wage-loss compensation benefits and medical benefits, appellant submitted additional medical evidence that he felt showed that he was entitled to compensation after October 10, 2020 due to residuals of his January 11, 1997 employment injury. Given that the Board has found that OWCP properly relied on the opinion of the OWCP referral physician, Dr. Askin, in terminating appellant's compensation effective October 10, 2020, the burden shifts to appellant to establish that he is entitled to compensation after that date.¹⁶ The Board has reviewed the additional evidence submitted by appellant and finds that it is not of sufficient probative value to establish that he had residuals of his January 11, 1997 employment injury after October 10, 2020.

Appellant submitted a March 24, 2021 report from Dr. Faierman who provided a history of the January 11, 1997 incident, noting that appellant reported he was driving a mail carrier truck when the brakes on the truck malfunctioned. He further indicated that the brakes kicked back, causing him to strike his right knee against the steering wheel and then to hit a cement column to avoid hitting pedestrians. Dr. Faierman discussed his physical examination findings and diagnosed: post-traumatic cervical spondylosis at C4-5, C5-6, and C6-7; post-traumatic lumbar spondylosis at L4-5 and L5-S1; right knee post-traumatic degenerative changes status post right

¹³ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ See *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *C.S.*, Docket No. 18-0952 (issued October 23, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

¹⁵ *Id.*

¹⁶ See *supra* note 14.

knee medial meniscectomy; and post-traumatic left knee degenerative changes. He maintained that, if the history of injury was accurate, there was a causal relationship between the January 11, 1997 incident and the injuries to appellant's cervical spine, lumbar spine, and knees. Dr. Faierman noted that appellant advised that he suffered a "recurrent work injury" when he fell at work on an unspecified date due to instability in his knees and aggravated his cervical spine, lumbar spine, and bilateral knees. He opined that, based on the history, clinical examination and medical records reviewed, there was a causal relationship between the January 11, 1997 incident and the injuries to the cervical spine, lumbar spine, and bilateral knees, as well as with the "recurrent injury" at work which aggravated the cervical spine, lumbar spine, and bilateral knees. Dr. Faierman found that appellant was totally disabled.

The Board finds, however, that Dr. Faierman's March 24, 2021 report is of limited probative value regarding continuing disability or residuals causally related the accepted January 11, 1997 employment injury. Dr. Faierman's report is not based on a complete and accurate factual history as he described a mechanism of injury, *i.e.*, hitting a cement column on January 11, 1997, that is not supported by the factual evidence of record.¹⁷ He did not provide a rationalized medical opinion relating appellant's condition to the accepted employment injury. As noted above, the Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹⁸ Therefore, this report is insufficient to establish appellant's claim.

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 benefits and medical benefits, effective October 10, 2020, as he no longer had disability or residuals causally related to his accepted January 11, 1997 employment injury. The Board further finds that appellant has not met his burden of proof to establish continuing disability or residuals on or after October 10, 2020 causally related to his accepted January 11, 1997 employment injury.

¹⁷ See *supra* note 15.

¹⁸ See *supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2022
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