

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 20, 2021, as she no longer had disability or residuals causally related to her accepted bilateral shoulder and knee conditions.

FACTUAL HISTORY

On October 28, 2013 appellant, then a 44-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral shoulder and knee conditions due to factors of her federal employment, including repetitive pushing, pulling, standing, walking, getting in and out of the mail truck, carrying a mailbag weighing up to 70 pounds, and delivering mail.³ OWCP accepted her claim for bilateral shoulder rotator cuff strains and bilateral knee lateral collateral ligament sprains. Appellant retired from federal employment due to disability, effective January 13, 2014. She underwent right knee arthroscopy on March 31, 2015.

On August 5, 2015 appellant filed a claim for compensation (Form CA-7) for disability from work commencing July 11, 2015. In an election form dated August 17, 2015, she elected to receive FECA wage-loss compensation benefits in lieu of Office of Personnel Management retirement benefits. OWCP paid appellant wage-loss compensation benefits effective July 11, 2015 and placed her on the periodic rolls, effective August 23, 2015.

On July 19, 2016 appellant underwent OWCP-approved right shoulder arthroscopy.

On February 18, 2021 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a copy of the case record, to Dr. Rafael A. L. Steuart, a Board-certified orthopedic surgeon, for a second opinion examination with functional capacity evaluation (FCE). In a March 6, 2021 report, Dr. Lopez indicated that he reviewed the SOAF and noted that appellant's claim was accepted for bilateral shoulder rotator cuff sprains and bilateral lateral collateral ligament knee sprains. On examination of her shoulders, he observed no evidence of swelling, crepitation, spasm, or atrophy. Dr. Lopez reported that examination of appellant's knees revealed no evidence of swelling, crepitation, instability, spasm, atrophy, or deformity. Neurologic examination of the upper and lower extremities showed 5/5 strength. Dr. Lopez diagnosed bilateral shoulder sprain (resolved), bilateral shoulder rotator cuff sprain (resolved), and bilateral lateral collateral ligament knee sprain (resolved). In response to OWCP's questions, he indicated that appellant did not have "residuals due to the employment injuries as noted in the SOAF." Dr. Lopez explained that her physical examination was "near normal." He also opined that appellant could return to work.

³ OWCP assigned the present claim OWCP File No. xxxxxx536. Appellant has two previously accepted occupational disease claims. Under OWCP File No. xxxxxx301, OWCP accepted a February 16, 2013 claim for lumbar intervertebral disc without myelopathy. It terminated appellant's wage-loss compensation and medical benefits under OWCP File No. xxxxxx301, effective July 18, 2015. Under OWCP File No. xxxxxx036, OWCP accepted her May 6, 2013 claim for bilateral hallux varus and bilateral hand sprain. Appellant also has a previously accepted traumatic injury claim (Form CA-1) under OWCP File No. xxxxxx238, which OWCP accepted for a fracture of her left ankle medial malleolus, left patella fracture, and left ankle sprain causally related to an April 26, 2011 employment injury. OWCP administratively combined these cases with the latter case as the master file.

In a report dated April 1, 2021, Dr. Mark W. Bridges, a Board-certified orthopedic surgeon, indicated that appellant was seen for complaints of bilateral shoulder and knee pain. On examination of her right knee, he observed mild medial and lateral patellar facet tenderness and mild patellar crepitus. Patellar apprehension testing was positive. Examination of appellant's left knee revealed no swelling, ecchymosis, or deformity. On examination of her shoulders, Dr. Bridges observed pain with range of motion and moderate subacromial tenderness. Impingement testing was positive. Dr. Bridges diagnosed right knee synovitis and patella tendinitis and bilateral rotator cuff tendonitis. He opined that appellant's injuries were caused by her employment and explained that residual shoulder and knee weakness after her operations resulted in increased strain of her tendons.

In a memorandum of telephone call (Form CA-110) dated April 13, 2021, appellant noted her disagreement with Dr. Lopez' March 6, 2021 report and alleged that she still had multiple continuing ailments.

On May 28, 2021 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits because her accepted bilateral shoulder and knee conditions had resolved. It found that the weight of the medical evidence rested with the March 6, 2021 medical report of Dr. Lopez, an OWCP second opinion examiner, who found that she no longer had any disability or residuals causally related to her accepted bilateral shoulder or knee conditions. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

Appellant submitted physical therapy treatment notes dated October 19, 2020 through March 25, 2021.

On June 25, 2021 appellant, through counsel, responded to the May 28, 2021 notice of proposed termination. She argued that OWCP erroneously applied the burden of proof standard required to terminate wage-loss compensation or medical benefits and that the weight of the medical evidence should not rest with Dr. Lopez' March 6, 2021 report.

By decision dated July 20, 2021, OWCP finalized the notice of proposed termination of appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical evidence rested with Dr. Lopez, an OWCP second opinion examiner, who had determined, in a March 6, 2021 report, that she did not have residuals or disability due to her accepted bilateral shoulder and knee conditions.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of benefits.⁴ It may not terminate compensation without establishing

⁴ *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

either that the disability has ceased or that it is no longer related to the employment.⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.⁸

ANALYSIS

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 20, 2021.

OWCP accepted appellant's occupational disease claim for bilateral shoulder rotator cuff strains and bilateral knee lateral collateral ligament sprains. By decision dated July 20, 2021, it terminated her wage-loss compensation and medical benefits based on the opinion of Dr. Lopez, an OWCP second opinion examiner, who concluded in a March 6, 2021 report that appellant no longer suffered residuals of her employment-related bilateral shoulder and knee conditions.

In a March 26, 2021 report, Dr. Lopez noted appellant's accepted conditions on the SOAF and provided examination findings. In response to OWCP's questions, he indicated that she did not have "residuals due to the employment injuries as noted in the SOAF." Dr. Lopez further explained that appellant's physical examination was "near normal" and opined that she could return to work.

The Board finds, however, that Dr. Lopez' report lacks sufficient medical reasoning to establish that appellant's accepted bilateral shoulder and knee conditions had resolved and that she could return to full-duty work. Dr. Lopez provided only brief responses to OWCP's questions and did not explain, which objective findings of record established that appellant's accepted conditions had resolved.⁹ Rationalized medical evidence must include rationale explaining how the physician reached the conclusion he or she is supporting.¹⁰ Accordingly, the Board finds that Dr. Lopez' report lacks sufficient medical reasoning to establish that appellant's accepted bilateral shoulder and knee sprains had resolved. Furthermore, OWCP requested that she undergo a FCE

⁵ *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see also I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁶ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁷ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

⁹ *See C.B.*, Docket No. 20-0629 (issued May 26, 2021); *see also G.G.*, Docket No. 20-0513 (issued January 12, 2021).

¹⁰ *B.B.*, Docket No. 19-1102 (issued November 7, 2019); *Beverly A. Spencer*, 55 ECAB 501 (2004).

examination along with a second-opinion examination, but the evidence of record does not indicate whether a FCE was provided.

Once OWCP undertook development of the record, it was required to complete development of the record by procuring medical evidence that would resolve the relevant issue in the case.¹¹ As it did not request that Dr. Lopez provide a supplemental opinion clarifying his opinion nor request an FCE, the Board finds that OWCP did not meet its burden of proof in terminating appellant's medical benefits.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 20, 2021.

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 20, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹¹ See *J.F.*, Docket No. 17-1716 (issued March 1, 2018).