United States Department of Labor
Employees' Compensation Appeals Board

B.C., Appellant	)	
and	)	**Docket No. 20-1672**
	)	**Issued: February 8, 2023**
DEPARTMENT OF THE NAVY, ALAMEDA NAVAL AIR STATION, CA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On September 29, 2020 appellant filed a timely appeal from a September 17, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 18, 2020, as she no longer had disability or residuals causally related to her accepted January 8, 1983 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. 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.*

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On January 8, 1983 appellant, then a 36-year-old computer operator, alleged that she sustained a traumatic injury when moving magnetic tapes while in the performance of duty. OWCP accepted the claim for left arm tendinitis and thoracic outlet syndrome, left reflex sympathetic dystrophy, and right carpal tunnel syndrome. Appellant stopped work entirely on September 12, 1984 and OWCP paid her wage-loss compensation on the periodic rolls. During the 1990's, she worked sporadically. On July 23, 1993 appellant underwent left shoulder surgery. She thereafter underwent a regimen of vocational rehabilitation. On April 17, 2000 appellant underwent an OWCP-authorized cervical discectomy and fusion at C5-6.[4] She was released to full-time modified duty on March 29, 2001. On September 19, 2005 appellant returned to work in a computer specialist position at Camp Lejeune, North Carolina.

By decision dated January 5, 2006, OWCP terminated appellant's wage-loss compensation and medical benefits based on a finding that her accepted conditions of right carpal tunnel syndrome, calcifying tendinitis of the left shoulder, thoracic outlet syndrome, and degenerative disc disease of the cervical spine had resolved. On January 10, 2006 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated June 1, 2006, OWCP's hearing representative reversed the termination of compensation benefits. The hearing representative noted that appellant's treating physician had recommended a cervical fusion at C5-6 in 2000, which was subsequently authorized, and appellant underwent, although the basis for the authorization was unclear.

On or about November 4, 2006 appellant stopped work again and filed a recurrence claim. She retired on disability, effective January 3, 2007, and elected to receive FECA compensation in lieu of Office of Personnel Management retirement benefits, effective November 13, 2006. Following further development, OWCP resumed paying appellant wage-loss compensation on the periodic rolls as of September 4, 2007.

A statement of accepted facts (SOAF) dated December 4, 2009 related that appellant's claim was accepted for left arm tendinitis and thoracic outlet syndrome, left reflex sympathetic dystrophy, and right carpal tunnel syndrome. It also noted that in 2000 OWCP erroneously authorized a cervical surgery for a condition which had not been accepted.

OWCP expanded the acceptance of the claim to include displacement of cervical intervertebral disc without myelopathy, cervical post-laminectomy syndrome, and intervertebral cervical disc disorder with myelopathy.

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[3] Docket No. 08-0239 (issued October 20, 2008); Docket No. 12-0398 (issued December 18, 2012).

[4] Appellant was involved in a nonindustrial automobile accident in 1986 during which she sustained a cervical injury.

OWCP subsequently received medical progress reports dated November 22 and December 20, 2019, and February 10, 2020 from Dr. Swachitha Kothapally, a family medicine specialist. In her November 22, 2019 report, Dr. Kothapally noted that the reason for the appointment was to fill out workman's compensation paperwork. She diagnosed cervicalgia and unqualified vision loss, left eye. In the December 20, 2019 and February 10, 2020 reports, Dr. Kothapally continued to diagnose cervicalgia, which appellant had experienced since a fall at work many years ago. She noted, in the February 10, 2020 report, that appellant's chronic neck pain was aggravated from the last few weeks, and that she reported difficulty swallowing solid and liquid foods during neck pain flare-ups. Dr. Kothapally checked appellant's thyroid and additionally reported on her blurry vision. OWCP also received a March 13, 2020 report from a nurse practitioner, laboratory testing, and diagnostic testing, including a March 13, 2020 soft-issue ultrasound of the neck and an April 10, 2020 computerized tomography scan of the neck.

On June 29, 2020 OWCP referred appellant, together with the December 4, 2009 SOAF, the medical record, and a series of questions, to Dr. John G. Keating, a Board-certified orthopedic surgeon, for a second opinion to evaluate her continued disability. The December 4, 2009 SOAF provided noted that on January 8, 1983 appellant suffered a traumatic injury while carrying magnetic tapes weighing approximately two pounds each. It also noted that it had erroneously authorized a cervical surgery, which appellant underwent on April 27, 2000.

In a July 20, 2020 report, Dr. Keating related that appellant incurred injury due to carrying 10 tapes in each arm, which amounted to a 40-pound load. He noted his review of the medical record and objective testing and presented examination findings. Dr. Keating indicated that appellant's case appeared to be extremely complex on the surface and extended back almost 40 years, based on his review of the medical record and his physical examination, she had reached maximum medical improvement. On physical examination, he indicated that appellant had no current active diagnoses that he could ascribe to carrying magnetic tapes in both upper extremities in 1983 and that the work-related conditions had resolved. Dr. Keating indicated that there was no physical stigmata of complex regional pain syndrome or ongoing active muscular denervation of the upper extremities which he could relate to the 1983 accident or any other injury that he could causally ascribe to carrying a load of magnetic tapes in each arm, whether it was 2 pounds as described in the SOAF or 40 pounds as appellant described. He noted that the 1984 examination by Dr. Michael S. Baker, a Board-certified general surgeon, was the examination in closest proximity to her accident. Dr. Keating indicated that the examination was relatively normal with the exception of some weakness in the intrinsic muscles of the hand, which was not readily reproducible, with no obvious atrophy and no signs or evidence of a complex regional dystrophy syndrome or thoracic outlet syndrome. Dr. Keating also noted that appellant's complaints were more severe than her physical findings on Dr. Baker's examination and the laboratory studies. He indicated that there were multiple medical reports in appellant's file, which returned her to work without any further treatment referable to her January 8, 1983 claim and which repeatedly indicated that she had no residuals of carpal tunnel or tendinitis, no signs of complex regional dystrophy, but perhaps some mild signs of thoracic outlet syndrome without any explanation of how this could have been the result of the 1983 injury. Dr. Keating noted that appellant received the diagnosis of thoracic outlet syndrome one decade following her January 8, 1983 injury. He opined that appellant had been treated for all the conceivable problems originating from her 1983 injury and that his examination found no residual of any problem lingering 37 years following the injury as described in the chart and by appellant. Based on the SOAF, Dr. Keating opined that

there were no residuals or ongoing evidence of a disability causally related to the January 8, 1983 injury. He indicated that most of the major surgeries appellant had involved her cervical spine, which had not been accepted as compensable. Dr. Keating also noted that the first nerve conduction study in 2007 was, in and of itself, so remote from her 1983 injury that it was not reasonable to ascribe any abnormalities to that injury. Furthermore, he advised that carrying magnetic tapes over 30 years ago, even if it did cause carpal tunnel, would be resolved following the successful carpal tunnel release of the right wrist as there were no signs of thenar eminence flattening and no active signs of a median nerve irritation on his examination. Dr. Keating noted that the SOAF indicated that the left arm tendinitis, thoracic outlet, left reflex sympathetic dystrophy, and right carpal tunnel syndrome were compensable conditions and that he found no objective evidence on examination of ongoing organic stigmata reasonably related to the 1983 injury and there was no permanent residuum or disability. He also completed a work capacity evaluation (Form OWCP-5c) in which he opined that appellant could return to her date-of-injury position with no restrictions.

By notice dated August 11, 2020, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Keating's opinion that the January 8, 1983 accepted conditions had ceased without residuals or disability. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

By decision dated September 17, 2020, OWCP terminated appellant's wage-loss compensation and medical benefits, effective September 18, 2020, based on Dr. Keating's second opinion.

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] 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

[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).

must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.[9]

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 18, 2020.

OWCP referred appellant to Dr. Keating for a second opinion evaluation to determine the status of her accepted conditions and work capacity. In his July 20, 2020 report, Dr. Keating opined that the accepted work-related conditions had resolved and that appellant could return to her date-of-injury position. While Dr. Keating included the compensable conditions of left arm tendinitis, thoracic outlet, left reflex sympathetic dystrophy, and right carpal tunnel syndrome in his list of accepted conditions and conducted a physical examination for those conditions, he did not note acceptance of appellant's cervical conditions. The December 4, 2009 SOAF presented to Dr. Keating noted that OWCP had erroneously authorized a cervical surgery for a cervical condition it had not accepted. The Board finds, however, that the record reflects that appellant underwent an authorized cervical surgical procedure and OWCP subsequently accepted residuals stemming from that procedure, including displacement of cervical intervertebral disc, post-laminectomy syndrome and intervertebral disc disorder with myelopathy.[10]

OWCP's procedures provide that when a DMA, second opinion specialist, or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.[11] OWCP did not provide Dr. Keating with a complete SOAF as it did not identify all of appellant's accepted conditions. As Dr. Keating's opinion was not based on a proper SOAF, it is of diminished probative value.[12] The Board thus finds that OWCP failed to meet its burden of proof.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 18, 2020.

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

[10] *See supra* note 4.

[11] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

[12] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: February 8, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board