

**United States Department of Labor
Employees' Compensation Appeals Board**

P.H., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SAFETY)
ADMINISTRATION, LAMBERT-ST. LOUIS)
INTERNATIONAL AIRPORT, St. Louis, MO,)
Employer)
_____)

**Docket No. 23-0665
Issued: October 13, 2023**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 4, 2023 appellant filed a timely appeal from a January 6, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

¹ The Board notes that, following the January 6, 2023 decision, OWCP received additional evidence. 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.*

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 6, 2023, as he no longer had disability or residuals causally related to his accepted December 4, 2011 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 5, 2011 appellant, then a 39-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on December 4, 2011 he injured his upper back, neck, and left arm when lifting a heavy bag from the x-ray machine while in the performance of duty. He stopped work on that date. OWCP accepted the claim for cervical and thoracic sprains. Appellant returned to full-duty work on December 15, 2011. On February 10, 2012 he underwent an OWCP-authorized interval instrumented discectomy and anterior fusion with bone graft at C4-5. OWCP paid appellant wage-loss compensation on the supplemental rolls beginning February 12, 2012 and on the periodic rolls beginning October 21, 2012. It subsequently expanded the acceptance of the claim to include cervical herniated disc at C4-5, cervical myelopathy, dysphagia, complete rotator cuff tear on the left, deep vein thrombosis (DVT), and pulmonary embolism.

On December 10, 2021 OWCP referred appellant, a statement of accepted facts (SOAF), and a series of questions to Dr. Michael H. Ralph, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a December 15, 2021 report, Dr. Keith J. Odegard, an orthopedic surgeon, reviewed appellant's left shoulder x-rays and found moderate degenerative arthritis with a possible large chronic rotator cuff tear, and early rotator cuff arthropathy.

OWCP subsequently received a January 5, 2022 report, wherein second opinion physician Dr. Ralph noted the accepted conditions and performed a physical examination. He recounted that appellant had undergone multiple surgical procedures on appellant's cervical and thoracic spines and found no neurological deficits in his upper extremities, but a tremendous number of subjective complaints. Dr. Ralph related that, prior to the January 4, 2021 surgery, appellant had normal electromyography and nerve conduction velocity studies of the upper extremities which were compatible with successful bilateral carpal tunnel releases. He requested additional left shoulder diagnostic studies. Dr. Ralph opined that none of OWCP-accepted diagnoses were causally related to the accepted employment injury. However, he listed the accepted conditions and found that, in regard to thoracic and cervical sprains, these conditions had resolved, if in fact they had ever occurred. Dr. Ralph opined that there was no residual deficit from C4-5 herniated disc, and that dysphagia, left leg DVT, and pulmonary emboli had resolved. He opined that appellant required

³ Docket No. 18-1020 (issued November 1, 2018).

no further treatment. Dr. Ralph found that, in regard to the accepted conditions, other than left shoulder, appellant was capable of returning to his date-of-injury position.

Dr. Ralph completed a supplemental report on July 29, 2022 noting that he had not received additional left shoulder magnetic resonance imaging (MRI) scan results. He found that the December 6, 2021 left shoulder MRI scan and December 15, 2021 x-rays did not demonstrate rotator cuff tear, but instead partial-thickness changes in the rotator cuff and substantial glenohumeral arthritis. Dr. Ralph opined that appellant's current left shoulder symptomatology was not part of the accepted conditions and that his accepted rotator cuff tear had resolved. He further reported that the accepted condition of rotator cuff tear never existed and was not currently an issue. Dr. Ralph concluded that appellant could return to his date-of-injury position without work-related restrictions.

On October 12, 2022 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on the January 5 and July 29, 2022 second opinion examination reports from Dr. Ralph, which supported that the accepted conditions had resolved without disability or residuals. It afforded appellant 30 days to submit additional evidence or argument challenging the proposed termination.

In a November 11, 2022 letter, appellant objected to the proposed termination. He provided additional physical therapy notes dated October 11 through December 29, 2022.

By decision dated January 6, 2023, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical evidence rested with the second opinion physician, Dr. Ralph, and established that appellant no longer had disability or residuals causally related to his accepted December 4, 2011 employment injury.

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.⁴ 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.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

⁴ *S.J.*, Docket No. 22-0936 (issued April 27, 2023); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *D.G.*, *id.*; *R.P.*, *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ *D.G.*, *id.*; *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

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 appellant no longer has residuals of an employment-related condition which require further medical treatment.⁸

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 6, 2023.

In his January 5, 2022 report, Dr. Ralph noted all of OWCP-accepted conditions opined then opined that none of those conditions were related to the accepted employment injury. He further opined that, even if appellant had thoracic and cervical sprains, these conditions had resolved. Dr. Ralph concluded that there was no residual deficit from C4-5 herniated disc, and that dysphagia, left leg DVT, and pulmonary emboli had also resolved. He completed a supplemental report on July 29, 2022 and opined that appellant's current left shoulder symptomatology was not part of the accepted conditions and that his accepted rotator cuff tear had resolved. Dr. Ralph further reported that the accepted condition of rotator cuff tear never existed and was not currently an issue. He concluded that appellant could return to his date-of-injury position without work-related restrictions.

It is well established that a physician's opinion must be based on a complete and accurate factual and medical background. When OWCP has accepted an employment condition as occurring in the performance of duty, the physician must base his opinion on these accepted conditions.⁹

OWCP's procedures and Board precedent dictate that, when an OWCP medical adviser, 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.¹⁰

Dr. Ralph did not rely on the SOAF as a framework in reaching his conclusions. He reached findings and conclusions that were contrary to the findings in the SOAF.¹¹ The Board,

⁷ *D.G., id.*; *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 (1990).

⁸ *D.G., id.*; *A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

⁹ *K.S.*, Docket No. 22-1011 (issued January 5, 2023); *D.T.*, Docket No. 21-1168 (issued April 6, 2022); *G.B.*, Docket No. 20-0750 (issued October 27, 2020); *T.P.*, *supra* note 7.

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990). *See also K.S., id.*; *D.T., id.*; *D.C.*, Docket No. 21-0780 (issued December 22, 2021); *Paul King*, 54 ECAB 356 (2003).

¹¹ *V.L.*, Docket No. 22-0336 (issued September 28, 2022); *P.M.*, Docket No. 22-0211 (issued August 5, 2022); *J.M.*, III, Docket No. 21-1213 (issued May 16, 2022).

thus, finds that Dr. Ralph's report is of diminished probative value and is insufficient to carry the weight of the medical evidence.¹² As such, OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 6, 2023.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 6, 2023.

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 13, 2023
Washington, DC

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

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

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

¹² *Supra* note 10.