

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 31, 2019, as her accepted employment conditions had ceased without residuals; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals on or after March 31, 2019, causally related to her accepted April 12, 2004 employment injury.

FACTUAL HISTORY

On April 17, 2004 appellant, then a 47-year-old security screener, filed a traumatic injury claim (Form CA-1) alleging that on April 12, 2004 she injured her head, neck, upper back, and right knee when inspecting luggage that had fallen from screening equipment while in the performance of duty. Appellant stopped work on April 17, 2004. OWCP assigned the claim OWCP File No. xxxxxx435 and on July 29, 2004 accepted it for thoracic and cervical strain. OWCP subsequently expanded the acceptance of appellant's claim to include aggravation of cervical spondylosis. It paid her wage-loss compensation on the supplemental rolls effective June 6, 2004, and on the periodic rolls effective October 3, 2004.³

In reports dated from November 15, 2003 through April 17, 2013, Dr. Jonathan Greenberg, a Board-certified neurosurgeon, recounted a history of the June 17, 2003 employment injury, and subsequently, the April 12, 2004 employment injury. He diagnosed multilevel cervical spondylosis with C4-5 and C5-6 disc herniations, multilevel cervical degenerative disc disease, cervical spondylosis without myelopathy, lumbar spondylosis, and spinal cord compression attributable to the effects of the two occupational injuries. Dr. Greenberg recommended anterior cervical discectomy and fusion at C5-6 and C6-7.

In reports dated from April 19, 2004 through June 20, 2017, Dr. James J. Hynick, an osteopathic physician specializing in family practice, found appellant totally disabled from work due to cervical disc herniations with chronic severe headaches, aggravation of cervical spondylosis with radiation into both upper extremities and the upper thoracic region, neck sprain, lumbar strain, thoracic sprain, and right knee contusion. He attributed these diagnoses to the June 17, 2003 and April 12, 2004 employment injuries.

On June 12, 2018 OWCP prepared an updated statement of accepted facts (SOAF), which listed accepted conditions of cervical, thoracic, and lumbar spine sprains, right knee contusion, chondromalacia of the patella of the right knee, aggravation of cervical spondylosis, and a C5-6 disc herniation causally related to the April 12, 2004 employment injury.

On September 14, 2018 OWCP referred appellant, the medical record, the June 12, 2018 SOAF, and a series of questions to Dr. Robert S. Schaefer, a Board-certified orthopedic surgeon, for a second opinion as to whether the April 12, 2004 employment injury had resolved, and whether appellant could return to her date-of-injury position. In an October 5, 2018 report, Dr. Schaefer noted that appellant described a June 2003 occupational head injury and concussion

³ Appellant previously filed a Form CA-1 on July 9, 2003, alleging that she had sustained a concussion on June 17, 2003, when she struck her head on the rollers of a security scanner machine. OWCP assigned that claim OWCP File No. xxxxxx566 and accepted it for headache and a lumbar strain.

that had not been included in the SOAF. On examination, he observed diffuse point tenderness to palpation over the cervical spine, tenderness along the cervical paraspinal musculature down to the trapezius muscle bilaterally, limited cervical spine extension, and minimal crepitation in both knees. Dr. Schaefer opined that the April 12, 2004 employment injuries had resolved. He provided work restrictions attributable to nonoccupational fibromyalgia, depression, and anxiety.

On February 6, 2019 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because her April 12, 2004 employment-related injury had resolved. It found that the weight of the medical evidence rested with the October 5, 2018 report of Dr. Schafer, the second opinion physician, who found that appellant no longer had any residuals or disability causally related to her accepted April 12, 2004 employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

In response, appellant submitted a March 6, 2019 statement, alleging that Dr. Schaefer did not provide an accurate history of injury, disregarded her complaints of headaches and severe pain, and aggravated her right knee by wrenching it back and forth.

In a March 13, 2019 report, Dr. Hynick listed appellant's medical appointments from June 17, 2017 through May 12, 2018. He opined that her cervical disc herniations at C3-4, C4-5, C5-6, and C6-7 with cervical spondylosis caused severe headaches and bilateral upper extremity radiculopathy. Dr. Hynick characterized these conditions as related to the April 12, 2004 employment injury.

By decision dated March 28, 2019, OWCP finalized the proposed notice of termination of appellant's wage-loss compensation and medical benefits, effective March 31, 2019. It accorded the weight of the medical evidence to Dr. Schaefer.

On May 29, 2019 appellant requested reconsideration. She provided a May 15, 2019 report, wherein Dr. Hynick disagreed with Dr. Schaefer's assessment, and opined that appellant remained disabled from work due to the April 12, 2004 employment injury.

By decision dated July 18, 2019, OWCP denied modification of the March 28, 2019 decision.

On March 4, 2020 appellant, through counsel, requested reconsideration. She contended that OWCP had not met its burden of proof to terminate her wage-loss compensation and medical benefits as there was a conflict of medical opinion between Dr. Hynick, her attending physician, and Dr. Schaefer, for the government.

Appellant submitted a February 14, 2020 report by Dr. Hynick elaborating his disagreement with Dr. Schaefer.

In a memorandum dated May 22, 2020, OWCP found that Dr. Hynick's reports following the March 28, 2019 termination decision had created a conflict with Dr. Schaefer's opinion with regard to whether appellant continued to have residuals or disability on or after March 31, 2019 causally related to the accepted employment injury.

In a letter dated August 31, 2020, OWCP referred appellant, the medical record, and a SOAF to Dr. Brian C. Leung, a Board-certified orthopedic surgeon, for a “second opinion assessment of [her] work[-] related condition..., the extent of disability, and appropriate treatment.” In reports dated September 17, 2020 and February 26, 2021, Dr. Leung diagnosed idiopathic degenerative conditions of the neck, back, and right knee unrelated to the accepted April 12, 2004 employment injury. He found appellant able to perform sedentary duty for four hours a day with limitations necessitated by the degenerative conditions.

By decision dated March 12, 2021, OWCP denied modification of its prior decision.

On July 7, 2021 appellant requested reconsideration of OWCP’s March 12, 2021 decision. She submitted a June 29, 2021 report wherein Dr. Hynick opined that appellant had continuing residuals of a C5-6 disc herniation causally related to the April 12, 2004 employment injury.

By decision dated October 4, 2021, OWCP denied modification of its March 12, 2021 decision. It found that as Dr. Hynick’s June 29, 2021 report did not contain sufficient medical rationale addressing preexisting cervical spine conditions, it could not overcome the special weight of the medical evidence accorded Dr. Leung’s opinion as impartial medical examiner.

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 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 failed to meet its burden of proof to terminate appellant’s wage-loss compensation and medical benefits, effective March 31, 2019.

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).

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.L.*, Docket No. 20-1611 (issued September 30, 2022); *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).

OWCP had referred appellant to Dr. Schaefer for a second opinion examination on whether the accepted April 12, 2004 employment injuries had resolved, and whether appellant could return to her date-of-injury position. The June 12, 2018 SOAF provided to Dr. Schaefer noted that the April 12, 2004 employment injury had caused a C5-6 disc herniation, a cervical sprain, aggravation of cervical spondylosis, thoracic and lumbar spine sprains, right knee contusion and chondromalacia of the patella of the right knee. Under its procedures, OWCP has determined that cases should be administratively combined where a new injury case is reported for an employee who previously filed an injury claim for the same part of the body, and where correct adjudication depends on cross-referencing between files.⁹ OWCP's procedures further provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.¹⁰ OWCP relied on the opinion of Dr. Schaefer in justifying its termination action, but it has not administratively combined OWCP File No. xxxxxx566 with the present claim.

As noted above, once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.¹¹ As OWCP did not administratively combine the files prior to the termination, it failed to meet its burden of proof.¹²

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 31, 2019.¹³

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c(1) (February 2000); *V.G.*, Docket No. 19-0670 (issued April 30, 2020); *L.P.*, Docket Nos. 18-1558, 18-1568 (issued June 21, 2019); *L.S.*, Docket Nos. 17-1863, 17-1867, & 17-1868 (issued April 18, 2018); *W.S.*, Docket No. 15-0969 (issued October 5, 2015); *C.C.*, Docket No. 14-1576 (issued March 9, 2015).

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

¹¹ *Supra* note 6.

¹² See *S.F.*, Docket No. 21-1338 (September 19, 2022).

¹³ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the October 4, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 5, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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