

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

H.S., Appellant)	
)	
and)	Docket No. 24-0211
)	Issued: April 5, 2024
DEPARTMENT OF THE NAVY, LONG)	
BEACH NAVAL SHIPYARD, Long Beach, CA,)	
Employer)	
)	

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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 27, 2023 appellant filed a timely appeal from a November 21, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation benefits, effective November 21, 2023, as he no longer had disability causally related to his accepted August 21, 1992 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case was previously before the Board.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 31, 1992 appellant, then a 45-year-old shipwright helper, filed a notice of traumatic injury (Form CA-1) alleging that on August 21, 1992 he injured his neck, left shoulder, and back, and experienced "loss of feeling in fingertip of thumbs" when a coworker tossed a piece of iron which struck his left shoulder, while in the performance of duty. He stopped work that day. OWCP accepted the claim for acute contusion to the left shoulder, cephalgia secondary to muscle contraction, cervical muscle strain, and left shoulder strain.

Appellant underwent left shoulder arthroscopic surgery on October 26, 1993. Thereafter OWCP referred appellant to vocational rehabilitation and he underwent computer training.

On September 9, 1996 OWCP terminated appellant's compensation benefits. By decision dated June 12, 1997, an OWCP hearing representative reversed OWCP's September 9, 1996 decision which terminated appellant's compensation. OWCP reinstated appellant on the periodic compensation rolls.

Following further development, OWCP referred appellant back to vocational rehabilitation.

By decision dated October 25, 2000, OWCP reduced appellant's compensation, effective that day, based on its determination that he was capable of earning wages in the constructed position of a security guard.

By decision dated November 17, 2000, OWCP issued an amended final reduction in compensation, noting that an incorrect pay rate had been used in the October 25, 2000 decision.

By decision dated May 16, 2001, an OWCP hearing representative vacated the November 17, 2000 decision, finding that OWCP did not clarify the number of years' experience or education needed for the security guard position. OWCP again paid appellant temporary total disability benefits on the periodic rolls.

Following further development, by decision dated August 28, 2002, OWCP reduced appellant's compensation, effective September 8, 2002, based on its determination that he could perform the duties of a security guard.

On July 2, 2003 appellant requested reconsideration. By decision dated August 9, 2003, OWCP denied modification of the August 28, 2002 decision. Appellant appealed to the Board. The Board, by decision dated February 8, 2005, affirmed OWCP's August 9, 2003 decision.

On June 13, 2023 OWCP referred appellant, along with a statement of accepted facts (SOAF), the case record, and a series of questions, to Dr. Chason S. Hayes, a Board-certified

² Docket No. 04-1916 (issued February 8, 2005).

orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of appellant's employment-related conditions and his work capacity.

In a July 11, 2023 report, Dr. Hayes noted his review of the SOAF and the medical record. He noted appellant's complaints of pain running from his left cervical spine into his left lateral deltoid with intermittent numbness and tingling. On physical examination, Dr. Hayes reported essentially normal examination of appellant's left shoulder, noting that range of motion testing was restricted by appellant's refusal to participate/cooperate with the examination with demonstrative evidence of system magnification. Examination of the cervical spine revealed tenderness to palpation and range of motion, with range of motion limited in all directions. Dr. Hayes opined that examination findings supported that the work-related condition had resolved as there was the normal examination of the shoulder notwithstanding the demonstrative emotional outbursts by appellant. He further opined that there were no physical limitations resulting from the work-related disability. Dr. Hayes found, instead, that appellant's disability was related to the nonwork-related cervical spondylosis. He explained that appellant's symptoms were related to the cervical spine rather than the shoulder as appellant had a normal shoulder examination, an abnormal cervical spine examination, and symptom magnification regarding the shoulder. Dr. Hayes concluded that appellant was capable of performing regular duties full time. In the accompanying July 11, 2023 work capacity evaluation (Form OWCP-5c), he opined that appellant was capable of performing his usual job without restriction.

By notice dated August 31, 2023, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits based on Dr. Hayes' medical opinion that the accepted conditions had ceased without disability or residuals. It afforded him 30 days to submit additional evidence or argument challenging the proposed action.

In a September 15, 2023 letter, appellant disagreed with the proposed termination decision. He argued that his medical condition had not improved, he was not able to work and had a 100 percent disability rating from the Department of Veterans Affairs. Appellant requested an extension of time to submit additional medical evidence.

By decision dated November 21, 2023, OWCP terminated appellant's wage-loss compensation benefits, effective that date, finding that the medical evidence of record established that he no longer had disability causally related to his accepted August 21, 1992 employment injury. The weight of the medical evidence was accorded to the opinion of the second opinion physician, Dr. Hayes. OWCP further advised appellant that his medical benefits remained open.

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.³ 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

³ See *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).

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

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation benefits, effective November 21, 2023.

OWCP terminated appellant's wage-loss compensation benefits based on the medical opinion of Dr. Hayes, the second opinion physician. Dr. Hayes opined that appellant had no disability causally related to his accepted employment-related conditions. He reported that appellant had an essentially normal left shoulder examination, with demonstrative evidence of symptom magnification. Dr. Hayes opined that there were no physical limitations resulting from the work-related left shoulder injury. However, in addition to the accepted left shoulder contusion and strain, OWCP accepted cephalgia secondary to muscle contraction and cervical muscle strain. Dr. Hayes indicated that physical examination of appellant's cervical spine revealed tenderness to palpation and range of motion, with range of motion limited in all directions. He generally discussed appellant's cervical spine condition and attributed appellant's disability to cervical spondylosis. However, Dr. Hayes failed to specifically address all the conditions OWCP accepted and he did not provide sufficient medical reasoning or explanation as to how he found that appellant no longer had disability from work due to these accepted conditions. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.⁶ Thus, Dr. Hayes' opinion on whether appellant had continuing employment-related disability is of limited probative value.

The Board, therefore, finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective November 21, 2023, as the medical evidence of record is insufficient to establish that he no longer had disability causally related to his accepted August 21, 1992 employment injury.⁷

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation benefits, effective November 21, 2023.

⁴ See *D.B.*, Docket No. 17-1335 (issued January 5, 2018); *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

⁵ *K.W.*, Docket No. 19-1224 (issued November 15, 2019); see *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ See *C.A.*, Docket No. 23-0511 (issued November 8, 2023); *G.W.*, Docket No. 22-0301 (issued July 25, 2022); *J.W.*, Docket No. 18-0678 (issued March 3, 2020); see *V.T.*, Docket No. 18-0881 (issued November 19, 2018); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

⁷ See *T.J.*, *id.*; see *R.K.*, Docket No. 19-1980 (issued May 7, 2020); *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *Willa M. Frazier*, 55 ECAB 379 (2004).

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2023 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

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