

² The Board notes that following the August 21, 2024 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 21, 2024, as he no longer had disability or residuals causally related to his accepted December 3, 1969 employment injury.

FACTUAL HISTORY

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

On December 3, 1969 appellant, then a 23-year-old shelf stocker, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a back injury when pulling a hand lift while in the performance of duty. He stopped work on December 4, 1969 and returned to work on December 8, 1969. OWCP accepted the claim for lumbosacral joint strain. The record reflects that OWCP paid appellant wage-loss compensation on the periodic rolls.

By decision dated April 13, 2020, OWCP expanded the acceptance of appellant's claim to include L5-S1 lumbar disc protrusion and L4-5 and L5-S1 lumbar radiculopathy.

Thereafter, OWCP received reports from Dr. Robert R. Reppy, an osteopathic physician specializing in family medicine who diagnosed L4-5 and L5-S1 discopathy with radiculopathy to the right and failed laminectomy syndrome. Physical examination findings included positive right-sided straight leg raising and sciatic stretch tests, moderate degree of paralumbar musculature muscle spasticity, no bilateral lower extremity edema, and poor right ankle inversion range of motion.

In March 15, April 12, and September 13, 2023 follow-up evaluation reports, Dr. Reppy noted that appellant's complaints and diagnoses were unchanged from prior reports. The case record also contains reports, dated May 31, July 12, October 17, December 6, 2023, January 22 and February 15, 2024, in which Dr. Reppy reported physical examination findings, detailed complaints, and diagnoses, which were unchanged from prior reports.

Dr. Reppy, in a March 25, 2024 report, diagnosed L4-5 and L5-S1 discopathy with radiculopathy and failed laminectomy syndrome. On physical examination, he reported forward flexion reduced to just below the knees, inability to reach knee with right side bending, right foot drop, inability to recover from squat without using arms, no bilateral lower extremity edema, and 2+ paralumbar muscle spasticity from scapulae to sacrum.

On April 23, 2024, OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, for a second opinion examination with Dr. Christo Koulisis, a Board-certified orthopedic surgeon, regarding the status of his employment-related conditions.

³ *Order Reversing Case*, Docket No. 20-0201 (issued October 22, 2021).

In reports dated April 25, May 2, and June 10, 2024, Dr. Reppy related appellant's complaints of lower back pain radiating into the right lower extremity, which increased with activity, as well as right calf paresthesia, and right foot drop. In April 25 and May 2, 2024 reports, Dr. Reppy diagnosed L4-5 and L5-S1 discopathy with radiculopathy and failed laminectomy syndrome. In his June 10, 2024 report, he added the diagnosis of L2-3 discopathy with radiculopathy.

In a June 17, 2024 second opinion report, Dr. Koullis reviewed appellant's factual and medical history, including the history of his accepted December 3, 1969 employment injury. He reported physical examination findings of normal gait, negative straight leg raising, negative lumbar tension signs, and range of lumbar motion measurements, including 60 degrees of forwarding bending, 0 degrees of back bending, 15 degrees of bilateral side bending, and 15 degrees of bilateral rotation. Dr. Koullis discussed a May 11, 2024 magnetic resonance imaging (MRI) scan, which demonstrated L2-3 stenosis, opining that the findings were due to nonwork-related progressive degenerative lumbar disc disease. He noted that appellant had no complaints of radiculopathy. Dr. Koullis opined that the accepted employment conditions had resolved. He explained this opinion by noting that appellant was neurologically intact, had negative tension signs, and range of motion was appropriate for his age and body habitus. Dr. Koullis concluded that appellant no longer had disability or residuals due to the accepted December 3, 1969 employment injury. He stated that, relating to the December 3, 1969 employment injury, appellant could work on a full-time basis without restriction. In a June 17, 2024 work capacity evaluation (Form OWCP-5c), Dr. Koullis provided the same opinion on work capacity.

In a July 10, 2024 report, Dr. Reppy reiterated appellant's complaints and his prior diagnoses.

On July 19, 2024, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits, finding that his December 3, 1969 employment injury had resolved. It found that the weight of medical evidence rested with the June 17, 2024 report of Dr. Koullis, OWCP's second opinion physician, who opined that he no longer had disability or residuals causally related to his accepted December 3, 1969 employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if he disagreed with the proposed termination.

In a July 23, 2024 follow-up medical evaluation, Dr. Reppy diagnosed L2-3, L4-5, and L5-S1 discopathy with radiculopathy and failed laminectomy syndrome. He reviewed Dr. Koullis' June 17, 2014 report, which he described as significantly flawed. Dr. Reppy maintained that Dr. Koullis misread previous medical reports and disregarded what appellant was telling him. Specifically, he related that appellant certainly did complain of radicular symptoms, contrary to Dr. Koullis' statement of no radicular symptom complaints.

Dr. Reppy, in an August 7, 2024 rebuttal letter, addressed Dr. Koullis' June 17, 2014 report, which he again asserted was severely flawed. He advised that appellant reported that no comprehensive neurological examination was performed, that Dr. Koullis did not perform the tests noted in his report, and that the examination only took 10 minutes. Dr. Reppy reported that appellant had low back symptoms radiating into his right lower extremity down to his toe. Dr. Reppy related this was considered a radicular symptom. Additionally, appellant had right foot drop and right calf parathesis, which also constituted radicular symptoms. Dr. Reppy maintained

that, while Dr. Koullisis acknowledged that L5-S1 radiculopathy was an accepted condition, he ignored this fact in his conclusions. He questioned the validity of Dr. Koullisis' findings and conclusions, asserting that appropriate tests had not been performed.

By decision dated August 21, 2024, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that same day. It found that the weight of the medical evidence rested with Dr. Koullisis, the second opinion physician, who had determined in his June 17, 2024 report that appellant no longer had disability or residuals causally related to the accepted December 3, 1969 employment injury.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of compensation benefits.⁴ After it has determined that, an employee has disability causally related to his or her federal employment, 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 appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁸

ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 21, 2024, as he no longer had disability or residuals causally related to his accepted December 3, 1969 employment injury.

In a June 17, 2024 report, Dr. Koullisis, OWCP's second opinion physician, reviewed appellant's factual and medical history, and reported physical examination findings. He discussed a May 11, 2024 MRI scan, which demonstrated L2-3 stenosis, opining that the findings were due to nonwork-related progressive degenerative lumbar disc disease. Dr. Koullisis noted that appellant had no complaints of radiculopathy and opined that the accepted employment conditions had resolved. He explained this opinion by noting that appellant was neurologically intact, had

⁴ *H.J.*, Docket No. 24-0879 (issued October 29, 2024); *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 *H.J.*, *id.*; *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 *V.L.*, Docket No. 24-0739 (issued August 26, 2024); *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).

negative tension signs, and range of motion was appropriate for his age and body habitus. Dr. Koullisis concluded that appellant no longer had disability or residuals due to the accepted December 3, 1969 employment injury. He stated that, relating to the December 3, 1969 employment injury, appellant could work on a full-time basis without restrictions.

The Board finds that the weight of the medical opinion evidence with respect to appellant's continuing work-related disability/residuals is represented by the well-rationalized opinion of Dr. Koullisis, OWCP's referral physician. The Board has reviewed the opinion of Dr. Koullisis and finds that it is sufficiently rationalized to carry the weight of the medical evidence with respect to its conclusions regarding the relevant issue of continuing work-related disability/residuals. Accordingly, OWCP properly relied on Dr. Koullisis' opinion in terminating appellant's wage-loss compensation and medical benefits, effective August 21, 2024.⁹

Appellant submitted a July 23, 2024 report wherein Dr. Reppy diagnosed L2-3, L4-5, and L5-S1 discopathy with radiculopathy and failed laminectomy syndrome. He reviewed Dr. Koullisis' June 17, 2014 report, which he described as significantly flawed. Dr. Reppy maintained that Dr. Koullisis misread previous medical reports and disregarded what appellant was telling him. Specifically, he related that appellant certainly did complain of radicular symptoms, contrary to Dr. Koullisis' statement of no radicular symptom complaints. In an August 7, 2024 rebuttal letter, Dr. Reppy further addressed Dr. Koullisis' June 17, 2014 report, which he again asserted was severely flawed. He advised that appellant reported that no comprehensive neurological examination was performed, that Dr. Koullisis did not perform the tests noted in his report, and that the examination only took 10 minutes. Dr. Reppy reported that appellant had low back symptoms radiating into his right lower extremity down to his toe, including right foot drop and right calf parathesis. However, Dr. Reppy did not provide sufficient medical rationale in support of his opinion. Therefore, Dr. Reppy's reports are insufficient to overcome the weight of the medical evidence accorded to Dr. Koullisis, or to create a conflict in the medical opinion evidence as to whether appellant had continuing work-related disability or residuals.¹⁰

As the medical evidence of record establishes that appellant no longer had disability or residuals causally related to the accepted December 3, 1969 employment injury, the Board finds that OWCP met its burden of proof.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 21, 2024, as he no longer had disability or residuals causally related to his accepted December 3, 1969 employment injury.

⁹ *P.G.*, Docket No. 24-0437 (issued June 26, 2024); *S.V.*, Docket No. 23-0474 (issued August 1, 2023).

¹⁰ *D.L.*, Docket No. 22-0161 (issued March 10, 2023).

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 26, 2025
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