

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's medical benefits for cervical strain effective March 4, 2020; and (2) whether appellant has met his burden of proof to establish continuing residuals of cervical strain on or after March 4, 2020.

FACTUAL HISTORY

On April 2, 1987 appellant, then a 34-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a neck injury when he was rear-ended in a motor vehicle accident, while in the performance of duty. He stopped work on April 3, 1987 and returned to work on April 13, 1987. OWCP accepted the claim for cervical muscle spasm under OWCP File No. xxxxxx916.

On July 5, 2000 appellant filed an occupational disease claim (Form CA-2) alleging that he developed depression as a consequence of the chronic pain related to his April 2, 1987 cervical injury. He noted that he first became aware of his condition on January 1, 1995. OWCP accepted the claim for major depression, recurrent episode, severe, without mention of psychotic behavior, and other psychogenic pain under OWCP File No. xxxxxx954. It paid appellant on the supplemental rolls effective June 17, 2000 and on the periodic rolls effective June 16, 2002.

On February 25, 2019 OWCP referred appellant for a second opinion examination with Dr. Michael Steingart, Board-certified in orthopedic surgery, to determine whether appellant continued to experience residuals of the accepted cervical sprain.

In a March 29, 2019 report, Dr. Steingart noted appellant's history of injury as cervical whiplash injury, with an overlying history of psychological and psychiatric medical issues. He related that appellant was still having headaches and pain in the area of the neck at C4, C5, and C3, and the head area on the right. Dr. Steingart also noted that appellant provided a history of striking his head on a basement wall and landing on his back, which had required low back surgery 10 years prior. He found that the cervical spine showed some tenderness to palpation into the region and provided measurements for range of motion (ROM) of the cervical spine. Dr. Steingart advised that there were no objective findings related to the accepted cervical sprain/strain. He noted that a magnetic resonance imaging (MRI) scan performed in 2005 revealed some degenerative findings at the C5-6 level and opined that these findings were more likely than not related to appellant's natural progression of aging and unrelated to the April 2, 1987 work injury. Dr. Steingart further opined that, strictly on the issue of the accepted cervical spine condition, appellant was capable of returning to his date-of-injury letter carrier position. However, he also noted that appellant was on high doses of fentanyl patches for pain, and appellant could not return to work in his letter carrier position while on this medication.

OWCP received several reports from Dr. Michele Morgan, a Board-certified neurologist. In a June 17, 2019 report, Dr. Morgan noted that appellant complained of intermittent back pain and anxiety related to his wife's health issues. She diagnosed recurrent major depression in partial remission, bipolar spectrum disorder, unspecified anxiety disorder, unspecified insomnia, and attention deficit disorder.

In a September 9, 2019 memorandum, OWCP explained that a second opinion would be scheduled to determine appellant's need for opioid medication.

On January 14, 2020 OWCP referred appellant for a second opinion examination with Dr. William D. Ross, Board-certified in pain medicine, to obtain an assessment of his work-related psychological condition and review of his pain management.

By notice dated January 28, 2020, OWCP advised appellant of its proposed termination of his medical benefits due to the accepted condition of cervical strain. It found that the opinion of Dr. Steingart, as the second opinion physician, constituted the weight of the evidence and established that appellant had no further employment-related disability or need for further medical treatment due to his cervical sprain. OWCP explained that appellant's medical and compensation benefits arising from his accepted emotional conditions were not affected. It afforded him 30 days to submit additional evidence.

In a January 30, 2020 attending physician's report (Form CA-20), Dr. Morgan diagnosed depression and anxiety due to chronic back pain.

In a February 7, 2020 report, Dr. Ross noted appellant's history of injury on April 2, 1987. He examined appellant and provided findings, which included some tenderness to palpation to the cervical paraspinals and temporomandibular joints bilaterally. Dr. Ross opined that the findings correspond with an ongoing diagnosis of cervical myofascial pain and temporomandibular (TMJ) disorder. He further opined that appellant continued to suffer from a chronic myofascial condition of the cervical spine with daily headaches and TMJ pain. Dr. Ross opined that appellant would continue to be symptomatic from these conditions and recommended a multimodal treatment plan for chronic pain, which included additional nonopioid analgesics, trigger point injections, myofascial release, and cognitive behavioral therapy.

By decision dated March 4, 2020, OWCP terminated appellant's medical benefits with regard to the accepted cervical strain, effective that date. It explained that the weight of the medical evidence established that he no longer had cervical strain related to the workplace injury. OWCP also noted that this decision did not affect any other accepted conditions.

On February 24, 2021 appellant, through his then-counsel, requested reconsideration

OWCP subsequently received a February 27, 2020 report from Dr. Morgan who diagnosed depression secondary to another medical condition, anxiety secondary to another medical condition, attention deficit disorder, inattentive presentation, insomnia, and adjustment disorder with mixed emotional features. Dr. Morgan also noted appellant's complaints of ongoing back and neck pain.

By decision dated April 28, 2021, OWCP denied modification of the March 4, 2020 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁴ 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.⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.⁷ For a conflict to arise, the opposing physicians' opinions must be of virtually equal weight and rationale.⁸ In situations where the case is properly referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's medical benefits for cervical strain effective March 4, 2020, as he had no further residuals causally related to his accepted employment injury.

OWCP referred appellant to Dr. Steingart for a second opinion regarding the status of his accepted condition of cervical strain. Dr. Steingart provided detailed findings on examination, including that appellant related that he was still having headaches and pain in the area of the neck at C4, C5, and C3 and the head area on the right, and that the cervical spine showed some tenderness to palpation into the region. He also provided ROM measurements for the cervical spine. Dr. Steingart noted that a 2005 MRI scan showed some degenerative findings at the C5-6 level and opined that these findings were more likely than not related to appellant's natural

³ *L.L.*, Docket No. 18-1426 (issued April 5, 2019); *C.C.*, Docket No. 17-1158 (issued November 20, 2018); *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁴ *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).

⁵ *See A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

⁶ *See R.P.*, Docket No. 17-1133 (issued January 18, 2018).

⁷ 5 U.S.C. § 8123(a); *see E.L.*, Docket No. 20-0944 (issued August 30, 2021); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009); *M.S.*, 58 ECAB 328 (2007).

⁸ *P.R.*, Docket No. 18-0022 (issued April 9, 2018).

⁹ *See D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).

progression of aging and unrelated to the April 2, 1987 work injury. He also noted that appellant provided a history of striking his head on a basement wall and landing on his back which required low back surgery 10 years prior. Dr. Steingart concluded that there were no objective findings related to the accepted cervical sprain/strain. He opined that strictly on the issue of the accepted cervical spine condition, appellant was capable of returning to his date-of-injury letter carrier position.

The Board finds that the opinion of Dr. Steingart is well rationalized and based on a complete factual and medical history. Dr. Steingart accurately summarized the relevant medical evidence, provided detailed findings on examination, and reached conclusions regarding appellant's condition, which comported with his findings. As such, his opinion is entitled to the weight of the evidence.¹⁰ The Board, therefore, finds that OWCP has met its proof to terminate appellant's medical benefits for the accepted condition of cervical strain.

While Dr. Ross opined that appellant continued to have ongoing cervical myofascial pain and TMJ disorder, the Board notes that these are not accepted conditions in this claim. Appellant's psychogenic pain disorder is an accepted condition in OWCP File No. xxxxxx954. While Dr. Ross opined that appellant continued to have ongoing cervical myofascial pain and TMJ disorder, he did not address whether appellant continued to have residuals of the accepted cervical strain. This evidence is therefore of no probative value.¹¹

Similarly, in reports dated June 17, 2019 and January 30, 2020, Dr. Morgan did not address the accepted condition of cervical strain and did not provide a complete and accurate medical history. As the reports from Dr. Morgan did not address the accepted condition of cervical strain her reports are of no probative value.¹²

The Board, therefore, finds that OWCP met its burden of proof to terminate appellant's medical benefits for the accepted condition of cervical strain as of March 4, 2020.

LEGAL PRECEDENT -- ISSUE 2

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing residuals or disability after that date, causally related to the accepted employment injury.¹³ To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized

¹⁰ See *A.M.*, Docket No 18-1243 (issued October 7, 2019); *C.V.*, Docket No. 17-1159 (issued April 6, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

¹¹ *J.T.*, Docket No. 20-1470 (issued October 8, 2021); *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹² *Id.*

¹³ See *L.S.*, Docket No. 20-1204 (issued October 4, 2021); *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *Manuel Gill*, *supra* note 10.

medical evidence based on a complete medical and factual background, supporting such causal relationship.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish continuing residuals of cervical strain on or after March 4, 2020.

Subsequent to the termination of his medical benefits for cervical strain, OWCP received a February 27, 2020 report from Dr. Morgan. Dr. Morgan, however, did not offer any opinion as to whether appellant had residuals of his accepted cervical strain condition. This report, therefore, lacked probative value regarding the issue on appeal.¹⁵

Appellant has not submitted any rationalized medical evidence sufficient to establish continuing residuals on or after March 4, 2020 due to his accepted cervical strain. Accordingly, the Board finds that he has not met his burden of proof.¹⁶

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's medical benefits for cervical strain effective March 4, 2020. The Board further finds that he has not met his burden of proof to establish continuing residuals on or after March 4, 2020.

¹⁴ *Id.*

¹⁵ *J.T.*, *supra* note 11.

¹⁶ *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 2022
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