

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 3, 2024, as he no longer had disability or residuals causally related to his January 8, 2013 employment injury; and (2) whether appellant has met his burden of proof to establish continuing disability or residuals, on or after April 3, 2024, causally related to his accepted January 8, 2013 employment injury.

FACTUAL HISTORY

On January 8, 2013 appellant, then a 48-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on that date, he injured his back and left elbow when he fell on a platform lift that had malfunctioned while in the performance of duty. He stopped work on January 8, 2013. OWCP initially accepted the claim for sprain of lumbosacral joint (ligament), contusion of left elbow and forearm, and sprain of left elbow. It later expanded the acceptance of the claim to include cervical spine derangement.³ OWCP paid appellant wage-loss compensation on the supplemental rolls, effective February 23, 2013, and on the periodic rolls, effective June 30, 2013.

On February 8, 2022 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. Frank J. Corrigan, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of his accepted conditions and work capacity.

In a February 24, 2022 report, Dr. Corrigan discussed appellant's January 8, 2013 employment injury, noted appellant's complaints of pain down into his arms with numbness and tingling, and radiating pain from his back down into his legs, and reviewed the medical record. He reported his findings on physical examination and noted the accepted conditions of sprain of lumbosacral joint, contusion and sprain of left elbow, and cervical spine derangement. Dr. Corrigan opined that the accepted conditions had resolved. He further opined that although appellant could not return to his date-of-injury position due to his preexisting degenerative cervical and lumbar spine conditions, he could perform sedentary work with restrictions related to these conditions.

On March 14, 2022 OWCP advised appellant of its notice of proposed termination of his wage-loss compensation and medical benefits, as the evidence of record established that he no longer had employment-related disability or residuals causally related to his accepted January 8, 2013 employment injury. It afforded him 30 days to submit additional evidence or argument if he disagreed with the proposed termination.

OWCP subsequently received a February 24, 2022 report by Dr. Ranga C. Krishna, an attending Board-certified neurologist. Dr. Krishna noted a history of the January 8, 2013 employment injury, discussed his examination findings, and provided assessments of cervical radiculopathy, lumbosacral radiculopathy and internal derangement of elbow. He opined that

³ An August 7, 2015 notification of personnel action (PS Form 50) indicated that appellant retired from the employing establishment, effective August 3, 2015, due to total disability.

appellant sustained work-related neck, lower back, and left elbow injuries and that appellant should refrain from strenuous physical activity. Dr. Krishna advised that he had subjective and objective evidence of cervical and lumbar radiculopathy stemming from his work-related injuries. He indicated that cervical and lumbar spine magnetic resonance imaging (MRI) scans revealed traumatic disc herniation and not a preexisting degenerative condition. Dr. Krishna further indicated that appellant was still on chronic pain medications and had not reached maximum medical improvement (MMI).

On April 27, 2022 OWCP declared a conflict in medical opinion between Dr. Krishna, appellant's attending physician, and Dr. Corrigan, the second opinion physician, regarding appellant's current condition and the extent of any employment-related disability.

OWCP prepared an April 27, 2022 SOAF, which documented appellant's accepted conditions as cervical disc displacement, unspecified cervical region; sprain of lumbosacral (joint/ligament); contusion of elbow; sprain of elbow and forearm, unspecified site; and thoracic or lumbosacral neuritis or radiculitis.

On November 7, 2022 OWCP referred appellant, along with a SOAF, the case record, and a series of questions to Dr. Yelena Ilina, a Board-certified neurologist, for an impartial medical examination to resolve the conflict in medical opinion.

In a November 1, 2022 attending physician's report (Form CA-20), Dr. Krishna noted a history of the January 8, 2013 employment injury. He diagnosed cervical and lumbar radiculopathy and left elbow derangement. Dr. Krishna checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by an employment activity. He advised that appellant was totally disabled from work commencing April 22, 2013.

In a December 14, 2022 report, Dr. Ilina, serving as an impartial medical examiner (IME), reviewed the history of appellant's January 8, 2013 employment injury. She noted his complaint of persistent severe low back pain for which he took medication. Dr. Ilina reported her examination findings and provided an impression of status post 2013 injury that was being treated by Dr. Krishna. She further noted that appellant had undergone a discectomy and fusion to treat his low back pain.

On April 13, 2023 OWCP requested a supplemental opinion from Dr. Ilina specifically addressing the status of appellant's accepted conditions and work capacity. However, no response was received.

On October 20, 2023 OWCP referred appellant, along with the April 27, 2022 SOAF, the medical record, and a series of questions to Dr. Alexander E. Merkler, a Board-certified neurologist, for another impartial medical examination to resolve the conflict in medical opinion.

In a February 24, 2024 report, Dr. Merkler, serving as the IME, discussed the history of appellant's January 8, 2013 employment injury. He reviewed findings regarding appellant's lumbar spine on MRI scans and electromyogram (EMG) studies from April 4, 2013 onward. Dr. Merkler noted appellant's current complaints of back pain which traveled down both legs, right greater than left. On neurological examination, he reported that appellant was in no acute distress. Strength was 5/5 strength in both arms, hands, and legs with some give-way weakness

in the proximal right arm and right knee flexion. Appellant was able to stand on his toes, but not his heels. Reflexes were 2+ and symmetric in biceps, brachioradialis, triceps, patellae, and ankles bilaterally. Hoffman and Babinski pathological reflexes were negative. Range of motion (ROM) measurements for the cervical and lumbar spines, and both shoulders were reported. Lumbar spine motion measured revealed forward flexion of 40 degrees (normal is 60 degrees). Extension and bilateral lateral flexion were 10 degrees each (normal is 25 degrees). Tenderness was noted to palpation in the left paravertebral and midline region. There was normal sensation to light touch in both arms and legs. There was limited ROM in the legs, but there was no evidence of dysmetria on attempts at heel-knee-shin or toe tapping. A Romberg test was negative. Gait was normal.

Dr. Merkler opined that appellant's work-related conditions had resolved, and there was no need for further medical treatment. He advised that appellant had reached MMI. Dr. Merkler explained that there was no objective evidence that he sustained any traumatic or permanent spine or nerve injury due to his January 8, 2013 employment injury. He indicated that patients with spinal cord or nerve injuries would have immediate symptoms of severe pain, weakness, numbness, tingling, or incontinence, but advised that appellant had none of these symptoms on the date of injury. Appellant's neurological examination was completely normal on the date of injury without evidence of spinal cord or nerve dysfunction. He was able to walk. There was no imaging of appellant's spine consistent with the fact that no healthcare provider was concerned about a spinal cord/nerve injury. Dr. Merkler related that at most, he sustained a sprain/strain, which was exactly diagnosed in urgent care and was akin to overuse/pulling of muscle or tendon, which caused temporary (days to weeks) of pain without any injury to the spinal cord or nerves. In addition, there had never been neuroimaging evidence of spinal cord or nerve injury. Imaging of the cervical and lumbar areas of the spine revealed no objective evidence of trauma, fracture, dislocation, soft tissue edema, or contusion. Rather, the imaging revealed evidence of spinal degenerative disease, which included disc bulges, facet arthropathy, osteophytes, disc herniation, and prominence of epidural fat, which were unrelated to the accepted January 8, 2013 employment injury. Dr. Merkler, thus, concluded that the accepted employment injury did not cause a spinal cord or nerve injury. Instead, he advised that any ongoing issues were related to preexisting spinal degenerative disease. Dr. Merkler concluded that appellant's current medical issues were related to his preexisting spinal degenerative disease and excess lumbar epidural fat and that he could return to his date-of-injury job as a motor vehicle operator.

By notice dated February 28, 2024, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits based on Dr. Merkler's impartial medical opinion that the accepted conditions had ceased without continued disability or residuals. It afforded him 30 days to submit additional evidence or argument challenging the proposed termination.

In a March 26, 2024 response, appellant, through counsel, disagreed with the proposed termination.

By decision dated April 3, 2024, OWCP finalized the proposed notice of termination of appellant's wage-loss compensation and medical benefits, effective April 3, 2024. It found that the opinion of Dr. Merkler, the IME, represented the special weight of the evidence and

established that appellant no longer had disability or residuals due to his accepted January 8, 2013 employment injury.

On August 8, 2024 appellant, through counsel, requested reconsideration. In support thereof, he submitted a June 11, 2024 report, wherein Dr. Krishna noted his current complaints of ongoing neck and back pain stemming from the January 8, 2013 employment injury. Dr. Krishna reviewed medical records and reported his examination findings. He provided an impression that appellant's clinical features were consistent with cervical radiculopathy, lumbosacral radiculopathy, multi-level cervical bulging discs resulting in cervical radiculopathy, multi-level lumbosacral bulging discs resulting in lumbosacral radiculopathy, and neuropathic pain syndrome. Dr. Krishna advised that appellant was permanently disabled with restrictions. He concluded that appellant was unable to obtain substantial gainful employment activity given the nature of his current diagnosis and chronicity of the same. This report, however, was unsigned.

OWCP, by decision dated August 21, 2024, denied modification of the April 3, 2024 termination decision, finding that the medical evidence of record submitted was insufficient to outweigh Dr. Merkler's impartial medical opinion.

On November 6, 2024 appellant, through counsel, requested reconsideration. He submitted a signed copy of Dr. Krishna's June 11, 2024 report.

By decision dated November 7, 2024, OWCP denied modification of the August 21, 2024 decision.

LEGAL PRECEDENT -- ISSUE 1

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

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ To terminate authorization for medical treatment, OWCP must

⁴ 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).

⁵ See *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 *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).

⁷ *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

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

Section 8123(a) of FECA provides in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”⁹ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME 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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant’s wage-loss compensation and medical benefits, effective April 3, 2024.

OWCP determined that a conflict in medical opinion existed between Dr. Krishna, appellant’s treating physician, who opined that appellant continued to have residuals and work restrictions due to his accepted January 8, 2013 employment injury, and Dr. Corrigan, OWCP’s second opinion physician, who found that appellant no longer suffered disability or residuals due to his accepted January 8, 2013 employment injury. In order to resolve the conflict, it properly referred him to Dr. Merkler for an impartial medical examination, pursuant to section 8123(a) of FECA, to resolve the conflict in medical opinion.¹¹

In a February 24, 2024 report, Dr. Merkler opined that appellant’s work-related conditions had resolved, and there was no need for further medical treatment. In support of his opinion, he explained that there was no objective evidence that he sustained any traumatic or permanent spine or nerve injury due to his January 8, 2013 employment injury. Dr. Merkler related that at most, he sustained a sprain/strain, which caused temporary (days to weeks) of pain without any injury to the spinal cord or nerves. He concluded that the accepted employment injury did not cause a spinal cord or nerve injury. However, the April 27, 2022 SOAF listed appellant’s accepted conditions as cervical disc displacement, unspecified cervical region; sprain of lumbosacral (joint/ligament); contusion of elbow; sprain of elbow and forearm, unspecified site; and thoracic or lumbosacral neuritis or radiculitis.

The Board has long held that the report of an IME who disregards a critical element of the SOAF is defective and insufficient to resolve the existing conflict of medical opinion

⁸ *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

⁹ 5 U.S.C. § 8123(a).

¹⁰ *See J.P.*, Docket No. 23-0075 (issued March 26, 2023); *C.M.*, Docket No. 20-1647 (issued October 5, 2021); *James P. Roberts*, 31 ECAB 1010 (1980).

¹¹ *Supra* note 9.

evidence.¹² The Board finds that Dr. Merkler's report is, therefore, not entitled to the special weight as an IME.

The Board, therefore, finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits for the accepted conditions, effective April 3, 2024.¹³

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 3, 2024.

ORDER

IT IS HEREBY ORDERED THAT the August 21 and November 7, 2024 decisions of the Office of Workers' Compensation Programs are reversed.

Issued: December 26, 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

¹² See *W.F.*, Docket No. 18-0653 (issued September 26, 2019); *B.B.*, Docket No. 18-1121 (issued January 8, 2019); *V.C.*, Docket No. 14-1912 (issued September 22, 2015).

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