

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

_____)
C.H., Appellant)
)
and) **Docket No. 24-0282**
) **Issued: May 1, 2024**
)
DEPARTMENT OF THE AIR FORCE, 97)
MAINTENANCE DIRECTORATE, WARNER)
ROBINS AIR FORCE BASE, Warner Robins, GA,)
Employer)
_____)

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 28, 2024 appellant filed a timely appeal from a January 11, 2024 merit decision and a January 23, 2024 nonmerit 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.

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective January 11, 2024, as he no longer had disability or residuals causally related to his accepted employment injury; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 20, 2004 appellant, then a 46-year-old aircraft mechanic, filed an occupational disease claim (Form CA-2) alleging that he developed carpal tunnel syndrome due to factors of his federal employment. He explained that his hands began to hurt and go numb when he would repetitively grip hand tools at work. Appellant noted that he first became aware of his condition and realized its relationship to his federal employment on May 3, 2002. OWCP accepted the claim for bilateral cubital tunnel syndrome and bilateral carpal tunnel syndrome. Appellant did not immediately stop work. OWCP paid him wage-loss compensation on the supplemental rolls, effective May 21, 2004, and on the periodic rolls, effective April 15, 2007, and pursuant to a loss of wage-earning capacity (LWEC) determination, effective September 2, 2008. It paid appellant schedule award compensation from February 14 through June 3, 2010.²

On June 8, 2009 appellant returned to full-time, modified-duty work as an information systems instructor, working 40 hours per week.

By decision dated September 8, 2009, OWCP issued an LWEC determination based on appellant's actual earnings as a full-time instructor. It found that he had worked in the position for over 60 days, commencing June 8, 2009, and that the position fairly and reasonably represented his wage-earning capacity.³

On January 15, 2020 Dr. M. Sean O'Brien, an osteopath and specialist in orthopedics, treated appellant for numbness, pain, and decreased range of motion of the right wrist that reportedly began in April 2004 while at work. He noted appellant's symptoms were exacerbated by daily activity use, forceful gripping, and lifting. Dr. O'Brien's physical examination revealed decreased sensation in the median nerve distribution, mild weakness in the thenar muscular eminence, positive Tinel's sign at the wrist, positive Phalen's test, and positive carpal compression test. He diagnosed paresthesia of the skin and arms. On December 22, 2021 Dr. O'Brien noted appellant's history was significant for lesions of the ulnar nerves in the left and right upper limb, paresthesia of the skin, bilateral carpal tunnel syndrome, and pain in the wrists. He diagnosed paresthesia of the skin and arms.

An electromyogram and nerve conduction velocity (EMG/NCV) study dated January 18, 2022 revealed evidence of ulnar neuropathy at the elbows with mild evidence of

² On May 25, 2006 appellant filed a notice of recurrence (Form CA-2a) alleging a recurrence of disability on March 10, 2006 causally related to the accepted employment injury. By decision dated January 18, 2007, OWCP denied appellant's claim. On January 28, 2007 appellant requested reconsideration. By decision dated March 9, 2007, OWCP vacated the January 18, 2007 decision finding that appellant was entitled to wage-loss compensation beginning March 10, 2006.

³ By decision dated February 17, 2010, OWCP granted appellant a schedule award for four percent permanent impairment of the left upper extremity and one percent permanent impairment of the right upper extremity. The period of the award ran for 15.6 weeks, from February 14 through June 3, 2010. On May 27, 2016 appellant filed a claim for wage-loss compensation (Form CA-7) for disability from work commencing March 20 through May 15, 2016. By decision dated September 28, 2016, OWCP denied his claim for compensation.

demyelination/neuropraxias, no evidence of median neuropathy at the wrists, and evidence of intracervical neural pathology at right C6 and C7.

On August 24, 2022 Dr. O'Brien treated appellant in follow-up for numbness, tingling, and decreased sensation in his hands. His physical examination revealed positive elbow flexion test, positive Tinel's sign, and cervical symptoms with flexion, abduction, bending and rotation. Dr. O'Brien noted the EMG/NCV studies revealed significant compression of his ulnar nerve bilaterally at the elbows with a cervical component. He diagnosed radiculopathy of the cervical region, lesion of the ulnar nerve, left upper limb, and lesion of the ulnar nerve, right upper limb. Dr. O'Brien recommended right elbow ulnar nerve decompression and returned appellant to full duty.

In a September 14, 2023 development letter, OWCP requested that Dr. O'Brien submit a current report regarding clinical findings, diagnoses, and appellant's work capacity.

In a work capacity evaluation (Form OWCP-5c) dated October 11, 2023, Dr. O'Brien checked a box marked "Yes" indicating that appellant was capable of performing his usual job without restriction. He related that as of August 24, 2022 appellant was released to full duty.

In a notice dated December 4, 2023, OWCP proposed to terminate appellant's wage-loss compensation as he no longer had disability or residuals causally related to his accepted employment injury. It found that the weight of the medical opinion evidence with respect to employment-related residuals/disability rested with the August 24, 2022 and October 11, 2023 opinions of Dr. O'Brien. OWCP afforded appellant 30 days to submit evidence and argument challenging the proposed termination action.

In an undated letter appellant disagreed with the proposed termination. He asserted that OWCP improperly proposed to terminate his wage-loss compensation based on the reports provided by Dr. O'Brien. Appellant indicated that he continued to experience residuals of his accepted work conditions in his hands and arms that migrated to his shoulder and neck. He noted that in August 2022 he presented to Dr. O'Brien with severe neck and right shoulder pain that radiated to his right hand. Appellant indicated that the physician refused to treat his neck and shoulder conditions. He noted that Dr. O'Brien recommended right arm surgery and requested authorization from OWCP to perform the surgery.

OWCP received multiple diagnostic reports of the hips, knees, elbows, and shoulders from 2015 through 2022.

On January 11, 2023 Dr. Godwin Mathew, a Board-certified family practitioner, noted that appellant reported pain in the right hip and knees. His history was significant for hyperlipidemia, impaired glucose tolerance, osteoarthritis of the knee, shoulder pain, carpal tunnel syndrome, knee pain, benign hypertension, and hearing loss.

By decision dated January 11, 2024, OWCP finalized the notice of proposed termination of appellant's wage-loss compensation, effective the same date. It found that the weight of the medical opinion evidence with respect to employment-related residuals/disability rested with the October 11, 2023 opinion of Dr. O'Brien. OWCP noted that the claim remained open for medical benefits.

On January 16, 2024 appellant requested reconsideration. He submitted his résumé, an honorable discharge from active duty, and several training certificates.

By decision dated January 23, 2024, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

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 been determined that an employee has a disability causally related to his or her 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

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective January 11, 2024.

OWCP based its termination of appellant's wage-loss compensation on the August 24, 2022 and October 11, 2023 reports of Dr. O'Brien, appellant's treating physician. In his August 24, 2022 report, Dr. O'Brien discussed appellant's history of medical treatment and reported his continuing symptoms of numbness, tingling, and decreased sensation in both hands. He detailed the physical examination findings, which included positive elbow flexion test, positive Tinel's sign, and cervical symptoms. Dr. O'Brien noted the EMG/NCV studies revealed significant compression of his ulnar nerve bilaterally at the elbows with a cervical component. He diagnosed radiculopathy of the cervical region, lesion of the ulnar nerve, left upper limb, and lesion of the ulnar nerve, right upper limb. Dr. O'Brien recommended right elbow ulnar nerve decompression. He returned appellant to full duty. Similarly, in a Form OWCP-5c dated October 11, 2023, Dr. O'Brien checked a box marked "Yes" indicating that appellant was capable of performing his usual job without restriction. He related that as of August 24, 2022 appellant was released to full duty.

The Board finds that Dr. O'Brien failed to provide adequate medical rationale for the opinion expressed in his August 24, 2022 and October 11, 2023 reports that appellant could return to full duty.⁷ Dr. O'Brien did not specifically address whether the accepted conditions of bilateral cubital tunnel syndrome and bilateral carpal tunnel syndrome had resolved. Rather, he

⁴ *Z.D.*, Docket No. 19-0662 (issued December 5, 2019); *see 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 *See R.P., id.*; *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *See T.F.*, Docket No. 11-0763 (issued November 7, 2011); *Leon Harris Ford*, 31 ECAB 514, 518 (1980).

recommended right elbow ulnar nerve decompression surgery to address the symptoms associated with these accepted work-related conditions. The absence of medical rationale on the crucial issue of continuing disability or residuals from work significantly diminishes the probative value of Dr. O'Brien's opinion.⁸

The Board, thus, finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective January 11, 2024, as the medical evidence of record is insufficient to establish that he no longer has disability or residuals causally related to his accepted employment injury.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective January 11, 2024.⁹

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 1, 2024
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

⁸ *M.R.*, Docket No. 20-0707 (issued November 30, 2020); *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.