

disability or residuals causally related to his accepted September 25, 1981 employment injury; and (2) whether appellant has met his burden of proof to establish continuing disability and/or residuals on or after September 11, 2023, causally related to the accepted employment injury.

FACTUAL HISTORY

On October 8, 1981 appellant, then a 36-year-old inspector, filed a traumatic injury claim (Form CA-1) alleging that on September 25, 1981 he injured the right side of his lower back when he removed pit covers while in the performance of duty. OWCP accepted the claim for herniated disc, lumbar spondylosis, and lumbar degenerative disc disease at L4-5. Appellant stopped work to undergo laminectomy and L4-5 micro excision on May 26, 1982. OWCP paid him wage-loss compensation on the periodic rolls.

On March 15, 2023 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. Jonathan J. Paul, a Board-certified orthopedic surgeon, for a second opinion to determine whether appellant continued to suffer from residuals and/or disability causally related to his accepted work-related injury.

In a report dated April 7, 2023, Dr. Paul noted his review of the SOAF and appellant's medical records. He indicated that appellant was ambulating with a walker, was unsteady on his feet without the walker, and related back pain with radiation into his right leg and foot. Dr. Paul performed a physical examination, where he observed diffuse tenderness in the lower back and reduced range of motion with flexion, extension, right and left lateral flexion, and rotation of the lumbar spine. He diagnosed multiple level spinal stenosis, facet arthrosis, and spondylosis. Dr. Paul indicated that appellant had objective loss of motion, but that appellant's subjective complaints and unsteadiness would not be typical or consistent with the objective findings. He opined that "the work-related condition has resolved," and "what [appellant] is dealing with now is degenerative spine that is age related and can be genetic as well. He does have evidence of congenital spinal stenosis." Dr. Paul noted that appellant "had not had a fusion." However, he had undergone a one-level laminectomy at L4-5 on May 6, 1982 and "[typically], he would be able to return to work full duty after that within four to six months." He opined that he was not capable of returning to his pre-injury position as an inspector "because of his current low back diagnosis" and that "his present level of disability is not a direct result of the work-related condition." On May 3, 2023 OWCP requested clarification from Dr. Paul as to whether or not all of the accepted conditions of herniated disc at L4-5, lumbar spondylosis at L4-5, and lumbar degenerative disc disease at L4-5 had resolved based upon his examination of appellant.

In a supplemental report dated June 6, 2023, Dr. Paul opined that appellant's "herniated disc symptoms had resolved" but that lumbar spondylosis and lumbar degenerative disc disease at L4-5 "would not be expected to resolve." He further opined that "any exacerbation from the described work injury would be accepted [sic] to have resolved and his current condition is the result of the progression of the degenerative changes."

By notice dated July 12, 2023, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits based on Dr. Paul's opinion that the accepted employment-related conditions had ceased without residuals or disability. It afforded him 30 days to submit additional evidence or argument challenging the proposed termination.

In a letter dated August 9, 2023, appellant disagreed with the proposal to terminate his compensation benefits. He noted that he can no longer walk independently, drive, or participate in activities outside of his home except for doctor visits and tests, which he attributed to the September 25, 1981 employment injury.

By decision dated September 11, 2023, OWCP terminated appellant's wage-loss and medical compensation benefits, effective that date. It found that Dr. Paul's opinion constituted the weight of the medical opinion evidence and established that appellant no longer had disability or residuals causally related to the accepted September 25, 1981 employment injury.

On August 16, 2024, appellant, through counsel, requested reconsideration of OWCP's September 11, 2023 termination decision.

By decision dated September 30, 2024, OWCP denied modification of its September 11, 2023 decision.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination 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 the employment.⁴ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁷

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 11, 2023.

³ *C.F.*, Docket No. 21-0003 (issued January 21, 2022); *J.T.*, Docket No. 19-1723 (issued August 24, 2020); *S.P.*, Docket No. 19-0196 (issued June 24, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *S.P.*, Docket No. 22-0393 (issued August 26, 2022); *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁵ *S.P.*, *id.*; *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

⁶ *S.P.*, *id.*; *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

⁷ *C.F.*, *supra* note 3; *M.E.*, Docket No. 20-0877 (issued August 17, 2021); *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

In his April 7, 2023 report, Dr. Paul noted his review of the SOAF and appellant’s medical records. He indicated that appellant was ambulating with a walker, was unsteady on his feet without the walker, and related back pain with radiation into his right leg and foot. Dr. Paul performed a physical examination, which revealed diffuse tenderness in the lower back and reduced range of motion with flexion, extension, right and left lateral flexion, and rotation of the lumbar spine. He diagnosed multiple level spinal stenosis, facet arthrosis, and spondylosis. Dr. Paul indicated that appellant had objective loss of motion, but that appellant’s subjective complaints and unsteadiness would not be typical or consistent with the objective findings. He opined that “the work-related condition has resolved,” and “what [appellant] is dealing with now is degenerative spine that is age related and can be genetic as well. He does have evidence of congenital spinal stenosis.” Dr. Paul noted that appellant “had not had a fusion.” However, he had undergone a one-level laminectomy at L4-5 on May 6, 1982 and “[typically], he would be able to return to work full duty after that within four to six months.” He opined that he was not capable of returning to his pre-injury position as an inspector “because of his current low back diagnosis” and that “his present level of disability is not a direct result of the work-related condition.” In his June 6, 2023 supplemental report, Dr. Paul opined that appellant’s “herniated disc symptoms had resolved” but that lumbar spondylosis and lumbar degenerative disc disease at L4-5 “would not be expected to resolve.” He further opined that “any exacerbation from the described work injury would be accepted [sic] to have resolved and his current condition is the result of the progression of the degenerative changes.” Dr. Paul, however, did not sufficiently explain with rationale whether the accepted employment injury in any way contributed to the current status of appellant’s accepted conditions, which objective findings showed had not resolved.⁸

As the April 7 and June 6, 2023 reports of Dr. Paul are insufficiently rationalized to justify the termination of appellant’s wage-loss compensation and medical benefits, the Board finds that OWCP failed to meet its burden of proof.⁹

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant’s wage-loss compensation and medical benefits, effective September 11, 2023.

⁸ *A.M.*, Docket No. 24-0533 (issued July 5, 2024); *C.G.*, Docket No. 23-0013 (issued April 24, 2023); *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *A.G.*, Docket No. 20-0187 (issued December 31, 2020); *see J.W.*, 19-1014 (issued October 24, 2019); *S.W.*, Docket No. 18-0005 (issued May 24, 2018).

⁹ In light of the Boards’ disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 14, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board