

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 15, 2024, as he no longer had disability or residuals causally related to his accepted January 4, 2021 employment injury.

FACTUAL HISTORY

On January 6, 2021 appellant, then a 38-year-old sandblaster, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury when sandblasting the up-gunned weapon station of an armored vehicle while in the performance of duty. He did not stop work. OWCP initially accepted the claim for left medial and lateral epicondylitis, left elbow sprain, and sprain of muscle, fascia, and tendon of the biceps of the left arm. The case record contains a notification of personnel action (Standard Form (SF) 50), dated November 9, 2021, which indicates that appellant's employment ended that date with the expiration of his temporary appointment.

On February 24, 2022 Dr. Nurulhusein Nurbhai, an osteopath and Board-certified orthopedic surgeon, performed OWCP-authorized left cubital tunnel release. OWCP paid wage-loss compensation for disability from work on the supplemental rolls, effective February 24, 2022.

On May 3, 2022 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Hewatt M. Sims, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation. It requested that Dr. Sims provide an opinion regarding whether appellant continued to have residuals and disability causally related to the accepted January 4, 2021 employment injury, and whether the accepted conditions should be expanded to include additional upper extremity conditions.

In a July 12, 2022 report, Dr. Sims detailed appellant's factual and medical history and reported the findings of his physical examination. He indicated that for the "most part" appellant's January 4, 2021 employment injury had resolved, and that he could return to his regular job of sandblaster. Dr. Sims recommended that the accepted conditions be expanded to include left cubital tunnel syndrome and left cubital tunnel release.

On August 22, 2022 OWCP expanded the acceptance of appellant's claim to include left cubital tunnel syndrome and left carpal tunnel release.

By decision dated August 24, 2022, OWCP terminated appellant's wage-loss compensation.

On September 9, 2022 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated December 8, 2022, OWCP's hearing representative reversed the August 24, 2022 decision, finding that OWCP failed to issue a proposed termination notice with a 30-day due process period and did not adequately address the

available medical evidence. The hearing representative directed OWCP to reassess appellant's accepted conditions.

On December 22, 2022 OWCP issued a notice proposing to terminate appellant's wage-loss compensation based on Dr. Sims' opinion.

On December 27, 2022 OWCP removed left carpal tunnel release from the list of accepted conditions, and issued an updated letter regarding the accepted conditions, which now included left cubital tunnel release.

By decision dated January 26, 2023, OWCP terminated appellant's wage-loss compensation, effective that date.

On February 1, 2023 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

On February 15, 2023 OWCP proposed to terminate appellant's medical benefits based on Dr. Sims' opinion. By decision dated March 23, 2023, it terminated appellant's entitlement to medical benefits.

On March 31, 2023 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. Following a preliminary review, by decision dated May 31, 2023, OWCP's hearing representative set aside OWCP's January 26 and March 23, 2023 decisions due to deficiencies in Dr. Sims' opinion. The hearing representative remanded the case to OWCP for further development of the medical evidence, including an amended SOAF and another referral of appellant to Dr. Sims, to be followed by issuance of a *de novo* decision. On June 23, 2023 OWCP amended the SOAF, which listed the accepted conditions as left medial and lateral epicondylitis; left elbow sprain; sprain of muscle, fascia, and tendon of the biceps of the left arm; and lesion of the left ulnar nerve.

A functional capacity evaluation (FCE), completed on July 13, 2023, determined that appellant reached maximum medical improvement (MMI) on July 13, 2023, and that he could perform medium-level work with occasional lifting of up to 70 pounds below waist height.

OWCP paid appellant wage-loss compensation for disability from work on the periodic rolls, effective July 16, 2023.

In a September 12, 2023 report, Dr. Nurbhai reported physical examination findings, noting that appellant exhibited a nontender left elbow with no neuritic symptoms, and full range of motion of the left elbow and wrist. There was no significant lateral epicondyle pain. Dr. Nurbhai diagnosed ulnar nerve entrapment at the left elbow and status post left cubital tunnel release and indicated that appellant had reached MMI. In a September 12, 2023 note, he indicated that appellant could return to work on September 13, 2023 without restrictions or limitations.

On October 25, 2023 OWCP again referred appellant, along with the medical record, a SOAF, and a series of questions, to Dr. Sims for a second opinion examination and evaluation.

It requested that he provide an opinion regarding whether appellant continued to have disability and residuals causally related to the accepted January 4, 2021 employment injury.

In a November 24, 2023 report, Dr. Sims discussed appellant's factual and medical history. He reported the findings of his November 21, 2023 physical examination, noting that appellant had full range of motion in the left elbow and wrist, 5/5 strength in the muscle groups of the left arm, and negative Hawkins' and Neer's signs. Appellant's cubital nerve was appropriately transposed into a good position in the volar aspect and there was mild tenderness to palpation at the posterior medial epicondyle. Dr. Sims diagnosed left elbow pain/numbness and subjective left hand weakness and noted the appropriateness of appellant's medical treatment, including left arm surgery. He advised that appellant had reached MMI by the date of his examination and that there was no treatment necessary for the January 4, 2021 employment injury. Dr. Sims determined that appellant's work-related conditions had resolved, allowing him to return to full-duty work as a sandblaster without restrictions. He noted, "at this point, with regard to all of the accepted conditions, this patient has resolved the work-related conditions and can return to work without restrictions full duty.... At this point, based on the diagnosis, I see no evidence or need for any restrictions in this right-hand dominant male." Dr. Sims indicated that appellant formerly had "a very minimum and typically insignificant pathology" and that it was puzzling to him why he had not returned to full-duty work without restrictions. He recommended an immediate return to work. In a November 24, 2023 work capacity evaluation (Form OWCP-5c), Dr. Sims advised that appellant could perform heavy-duty work and could work on a full-time basis in his usual job.

In a March 5, 2024 Form OWCP-5c, Dr. Nurbhai noted that appellant could perform medium-duty work according to his July 13, 2023 FCE. He indicated that he had examined appellant on September 12, 2023 and that he was released to full-duty work on a full-time basis without restrictions.

On March 14, 2024 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because he no longer had disability or residuals causally related to his accepted January 4, 2021 employment injury. It found that the weight of the medical opinion evidence, as represented by the second opinion report of Dr. Sims, established that appellant's work-related disability and residuals had ceased. OWCP afforded appellant 30 days to submit additional evidence or argument in writing if he disagreed with the proposed termination of his wage-loss compensation and medical benefits. No additional evidence or argument was received.

By decision dated April 15, 2024, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, as he no longer had disability or residuals causally related to his accepted January 4, 2021 employment injury. It found that the weight of the medical evidence rested with the November 24, 2023 report of Dr. Sims.

On April 19, 2024 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. During the August 15, 2024 hearing, counsel argued that appellant's compensation should have continued after April 14, 2024 because the employing establishment did not make adequate efforts, including initiation of

vocational rehabilitation services, to return appellant to gainful employment after the expiration of his temporary appointment on November 9, 2021.

By decision dated October 29, 2024, OWCP's hearing representative affirmed the April 15, 2024 decision terminating appellant's wage-loss compensation and medical benefits effective April 15, 2024.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.³ After it has 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.⁴ Its 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 has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 15, 2024, as he no longer had disability or residuals causally related to his accepted January 4, 2021 employment injury.

In a November 24, 2023 report, Dr. Sims, the OWCP referral physician, discussed the findings of his November 21, 2023 physical examination and diagnosed left elbow pain/numbness and subjective left hand weakness. He advised that there was no treatment necessary for the accepted January 4, 2021 employment injury. Dr. Sims determined that appellant's work-related conditions had resolved, allowing him to return to full-duty work as a sandblaster without restrictions. He noted, "at this point, with regard to all of the accepted conditions, this patient has resolved the work-related conditions and can return to work without restrictions full duty.... At this point, based on the diagnosis, I see no evidence or need for any restrictions in this right-

³ *Z.D.*, Docket No. 19-0662 (issued December 5, 2019); *see R.P.*, Docket No. 17-1 133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *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).

⁵ *See P.T.*, Docket No. 21-0328 (issued May 2, 2022); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009). *See also Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁷ *T.C.*, Docket No. 20-1 163 (issued July 13, 2021); *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

hand dominant male.” Dr. Sims recommended an immediate return to work. In a November 24, 2023 Form OWCP-5c, he advised that appellant could perform heavy-duty work and could work on a full-time basis in his usual job.

The Board finds that the weight of the medical opinion evidence with respect to continuing work-related residuals and disability is represented by the well-rationalized opinion of Dr. Sims. The opinion of Dr. Sims establishes that appellant ceased to have disability or residuals causally related to his accepted January 4, 2021 employment injury. The Board has reviewed the opinion of Dr. Sims and finds that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of continuing work-related residuals and disability. Accordingly, OWCP properly relied on Dr. Sims’ opinion to terminate appellant’s wage-loss compensation and medical benefits, effective April 15, 2024.⁸

In addition, the reports of Dr. Nurbhai, an attending physician, support OWCP’s termination action. In a September 12, 2023 note, he advised that appellant could return to work on September 13, 2023 without restrictions or limitations. In a March 5, 2024 Form OWCP-5c, Dr. Nurbhai noted that appellant could perform medium-duty work according to his July 13, 2023 FCE. He indicated that appellant was released to full-duty work on a full-time basis without restrictions.

OWCP’s procedures provide that, for claimants who were temporary employees at the time of their injury, the mere termination of a temporary appointment does not constitute an issue of disability, as it fails to meet the definition requiring incapacity due to an employment injury.⁹ As explained above, OWCP met its burden of proof to establish that appellant did not have disability or residuals related to the accepted January 4, 2021 employment injury after April 14, 2024.

The Board, therefore, finds that OWCP properly terminated appellant’s wage-loss compensation and medical benefits, effective April 15, 2024.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant’s wage-loss compensation and medical benefits, effective April 15, 2024, as he no longer had disability or residuals causally related to his accepted January 4, 2021 employment injury.

⁸ See *P.G.*, Docket No. 24-0437 (issued June 26, 2024); *S.V.*, Docket No. 23-0474 (issued August 1, 2023).

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3c(1) (June 2013).

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 29, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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