

establish continuing disability on or after December 10, 2017 due to the accepted December 30, 2005 employment injury.

FACTUAL HISTORY

On January 4, 2006 appellant, then a 47-year-old paralegal specialist, filed a traumatic injury claim (Form CA-1) alleging that on December 31, 2005 the right side of her arm/wrist struck her desk while in the performance of duty.³ She stopped work on January 3, 2006. Appellant returned to work on or about January 17, 2006. OWCP accepted the claim for right wrist contusion and ganglion of joint, right. It paid appellant wage-loss compensation on the supplemental rolls as of March 7, 2006. Appellant stopped work again on December 31, 2006. OWCP paid wage-loss compensation for total disability on the periodic rolls as of July 8, 2007.

On May 1, 2015 OWCP referred appellant to Dr. Chester DiLallo, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of her accepted conditions. In his May 15, 2015 report, Dr. DiLallo indicated that, while appellant's cyst was still present, he could not account for the symptoms in her right upper extremity. He concluded that there was no evidence of complex regional pain syndrome and that her persistent right upper extremity symptoms were not due to the accepted employment injury. Dr. DiLallo indicated that the cyst was the only residual related to the accepted injury and that the reason it had not resolved was because it had not been surgically removed. He concluded that appellant was not disabled as she could return to work in any capacity.

On February 6, 2017 OWCP referred appellant to Dr. D. Burke Haskins, a Board-certified orthopedic surgeon, for a second opinion evaluation. In his March 9, 2017 report, Dr. Haskins indicated that her complaints were excessive for a ganglion cyst and were suggestive of either symptom magnification and/or cervical radiculopathy. He noted that appellant had a history of preexisting cervical disc disease, with probable radiculopathy. Dr. Haskins concluded that she was not disabled due to the ganglion cyst. He completed a work capacity evaluation (Form OWCP-5c) indicating that appellant could return to work for eight hours a day, with a limitation of four hours a day of repetitive wrist movements. In a June 29, 2017 addendum report, Dr. Haskins explained that her ganglion cyst had not resolved, however, her right wrist contusion had resolved. He also related that, if appellant did not request surgical excision of the ganglion cyst, then no further treatment was required for that condition.

On October 4, 2017 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because her December 30, 2005 employment injury had resolved with no disabling residuals. It found that the weight of medical evidence rested with the reports of Dr. DiLallo and Dr. Haskins, who found that appellant's accepted conditions had resolved, with no residuals or continuing disability from work. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

In a November 4, 2017 letter, appellant advised that she disagreed with OWCP's proposal to terminate her benefits. She indicated that she would be submitting documentation from

³ On the date of injury, appellant was working four hours a day.

Dr. Tristan Shockley, a Board-certified physiatrist, which would support that her benefits should not be terminated. No further evidence was received.

By decision dated December 11, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits, effective December 10, 2017. The weight of the medical evidence was afforded to the opinions of its second opinion examiners, Dr. DiLallo, who opined that she was capable of returning to work in any capacity and that maximum medical improvement had been reached regarding the wrist, and Dr. Haskins, who opined that she could work eight hours a day with no more than four hours of repetitive movements of the right wrist, due to the ganglion wrist condition. Both physicians indicated that the accepted wrist contusion had resolved and that the accepted ganglion cyst was present clinically.

On December 18, 2017 appellant requested reconsideration and submitted reports previously of record.

In a January 23, 2018 report, Dr. Ricardo Pyfrom, a Board-certified orthopedic hand surgeon, noted the history of appellant's employment injuries and that she had not worked for 10 years. He provided an assessment of right wrist ganglion cyst, cervical disc disorder with radiculopathy, cervicothoracic region, and cervical disc disorder at C5-7 and C5-6 levels with radiculopathy. Surgical excision of the ganglion cyst was recommended pending pulmonary clearance given her oxygen dependence. Dr. Pyfrom noted that appellant had right hand pains and grip issues related to the cyst. He opined that she could not work due to the pain in the radial side of the right hand associated with the ganglion cyst. Dr. Pyfrom also indicated that appellant needed additional medical testing and care related to her chronic cervical radiculopathy and recommended that OWCP combine her cervical injury claim with the current claim.

On February 23, 2018 OWCP referred appellant to Dr. Sankara Kothakota, a Board-certified orthopedic surgeon, to resolve a conflict in the medical opinion evidence between Dr. Haskins, an OWCP referral physician, and Dr. Pyfrom, appellant's treating physician, regarding whether she could return to full-duty work. Dr. Kothakota was requested to relate all diagnoses and explain which, if any, were medically related to the accepted employment injury.

In a report dated April 16, 2018, Dr. Kothakota, based on a review of appellant's medical record, a statement of accepted facts (SOAF), and physical examination, concluded that she had "some residuals" of the ganglion cyst, but no longer had any disability due to the accepted employment injury. He noted her diagnoses of right wrist contusion, possible ganglion cyst, and sprain of the cervical spine. Dr. Kothakota indicated that appellant's right wrist ganglion cyst had completely subsided at the time of his examination, but noted that since she may have a recurrence of the ganglion cyst, she would require treatment and thus she had some residuals. He further opined that her cervical spine findings were mostly age related and preexisting conditions and that none of the findings, which were seen radiologically including degenerative changes, were related to the December 2005 employment injury. Based on his clinical examination and lack of any objective findings both radiologically and clinically, Dr. Kothakota opined that appellant could return to full-duty status, noting that her position did not require any heavy lifting or carrying, and even with a small ganglion cyst, the vast majority of the people could function normally. In an April 16, 2018 Form OWCP form, he opined that she was capable of working full time with restrictions for medium level work.

On May 4, 2018 OWCP requested that Dr. Kothakota clarify whether the restrictions provided on the Form OWCP-5c were for appellant's accepted conditions of right wrist conditions, sprain of the cervical spine, or for preexisting conditions. In a May 18, 2018 addendum, Dr. Kothakota indicated that he opined that appellant was capable of returning to her regular work in a medium-duty capacity. He noted that the restrictions on heavy duty lifting were for her preexisting condition of cervical spondylosis, which was not related to her December 2005 employment-related injury. Dr. Kothakota also indicated that appellant's wrist sprain was "more or less" resolved at the time of his clinical examination and that she was capable of returning to regular work within the restrictions indicated.

By decision dated September 5, 2018, OWCP vacated the December 11, 2017 termination decision in part, finding that appellant's accepted ganglion cyst condition had not resolved and the claim, therefore, remained open for medical treatment. It affirmed the December 11, 2017 decision in part, however, finding that the special weight of the medical opinion evidence rested with Dr. Kothakota, the impartial medical examiner, who opined that appellant could return to her regular work within the restrictions indicated, which were not related to the employment injury.

On September 24, 2018 appellant requested reconsideration. In an attached letter, she raised issues about not being allowed to work from home and the failure of the employing establishment to accommodate her. Appellant indicated that she was harassed to the level that she required therapy; that false information was provided regarding her employment injuries; and that her injury was permanent. She advised that there was no guarantee that surgery would help, that she has been unable to drive for two years because of her right arm/hand and neck/spine situation, that her employment injuries have worsened with time, and that she was on oxygen. Appellant argued that her physician's opinions should be given greater weight than OWCP's physicians as her medical evidence showed a causal relationship between her disability and her work injury.

Appellant submitted April 1, 2005 and April 26, 2006 reports from Octavia Carlos, a licensed clinical social worker; a May 9, 2006 memorandum; medical reports from Dr. Hampton Jackson, a Board-certified orthopedic surgeon, discussing cervical conditions and restrictions due to an August 31, 2001 employment injury; personnel records, including November 13, 2003, November 5 and December 6, 2004; a December 12, 2006 Equal Employment Opportunity Commission (EEOC) negotiated settlement agreement, and treatment notes from Dr. Shockley dated August 28 and September 27, 2012, previously of record.

In his August 28, 2012 treatment note, Dr. Shockley opined that appellant's ganglion of joint, contusion of wrist, cervical radiculitis, and unspecified myalgia and myositis were related to her 2001 and 2002 employment injuries. He recommended that OWCP administratively combine her two cases. In his September 27, 2012 treatment note, Dr. Shockley indicated that appellant reported spasms in her hands and back. Appellant's examination was essentially unchanged from the previous visit.

By decision dated December 21, 2018, OWCP denied modification of its September 5, 2018 decision, and found that the evidence of record was insufficient to establish that appellant had continuing disability due to the December 30, 2005 employment injury.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden of proof to justify modification or termination of benefits.⁴ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either 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 term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective December 10, 2017, as she had no disability due to the accepted December 30, 2005 employment injury.

OWCP referred appellant to Dr. DiLallo and Dr. Haskins for second opinion evaluations to determine the status of appellant's accepted conditions and work capacity. Both physicians concluded that appellant's ganglion cyst condition no longer disabled appellant. In his May 15, 2015 report, Dr. DiLallo opined that appellant was capable of returning to work in any capacity and that maximum medical improvement had been reached regarding the wrist. In his March 9, 2017 report, Dr. Haskins opined that appellant could work eight hours a day with no more than four hours of repetitive movements of the right wrist, due to the ganglion wrist condition. The Board notes that on the date of injury appellant was working four hours a day. As previously noted, disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁸ While Dr. Haskins noted that appellant was restricted from performing repetitive movements for more than four hours a day, appellant was not disabled from her date-of-injury position due to the accepted ganglion cyst, as she could return to work for four hours a day. As the Board has previously explained, disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment

⁴ See *N.P.*, Docket No. 19-0296 (issued July 25, 2019); *H.P.*, Docket No. 18-0851 (issued December 11, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *J.D.*, Docket No. 18-0958 (issued January 8, 2019); *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁶ See *D.P.*, Docket No. 18-0038 (issued January 4, 2019); *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁷ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁸ *Id.*

injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.⁹

The Board finds that OWCP properly accorded the weight of the medical evidence to both Dr. DiLallo and Dr. Haskins in terminating appellant's wage-loss compensation, effective December 10, 2017. Both physicians based their opinion on a proper factual and medical history and physical examination findings and provided medical rationale for their opinion. Dr. DiLallo and Dr. Haskins also provided a well-rationalized opinion based on medical evidence regarding appellant's disability status causally related to appellant's December 30, 2005 employment injury. Accordingly, OWCP properly relied on the second opinion reports of both Dr. DiLallo and Dr. Haskins in terminating her entitlement to wage-loss compensation benefits.¹⁰

LEGAL PRECEDENT -- ISSUE 2

As OWCP properly terminated appellant's wage-loss compensation, the burden of proof shifts to appellant to establish continuing disability causally related to the accepted injury.¹¹ To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.¹² Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹³

Section 8123(a) of FECA which provides that, 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 (known as a referee physician or impartial medical specialist) who shall make an examination.¹⁴ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹⁵ When there exist opposing reports of virtually equal weight and rationale and the case is 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.¹⁶

⁹ See *C.E.*, Docket No. 19-1617 (issued June 3, 2020).

¹⁰ *E.S.*, Docket No. 20-0673 (issued January 11, 2021); *K.W.*, Docket No. 19-1224 (issued November 15, 2019).

¹¹ *C.C.*, Docket No. 19-1062 (issued February 6, 2020).

¹² *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *T.C.*, Docket No. 19-1383 (issued March 2, 2020).

¹³ *Id.*

¹⁴ 5 U.S.C. § 8123(a); see *B.B.*, Docket No. 18-1121 (issued January 8, 2019); *R.P.*, Docket No. 17-1133 (issued January 18, 2018).

¹⁵ 20 C.F.R. § 10.321; *R.C.*, 58 ECAB 238 (2006).

¹⁶ See *R.P.*, *supra* note 14; *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing employment-related disability or residuals, on or after December 10, 2017, due to the accepted employment injury.

Following the termination of her wage-loss compensation benefits, effective December 10, 2017, appellant submitted a January 23, 2018 report from Dr. Pyfrom, who recommended surgical excision of the accepted right wrist ganglion cyst. Dr. Pyfrom also recommended additional medical testing and care for her diagnosed conditions of cervical disc disorder with radiculopathy, cervicothoracic region, and cervical disc disorder at C5-7 and C5-6 levels with radiculopathy. He opined that appellant could not work due to the pain in the radial side of the right hand associated with the ganglion cyst.

OWCP found a conflict in medical evidence between Dr. Haskins, an OWCP referral physician, and Dr. Pyfrom, appellant's treating physician, regarding whether she could return to work full duty and whether residuals of the accepted ganglion cyst remained.¹⁷ No conflict remained regarding appellant's right wrist contusion, which was found to have resolved by December 10, 2017. OWCP properly referred her for an impartial medical examination with Dr. Kothakota to resolve the conflict of medical opinion evidence, pursuant to 5 U.S.C. § 8123(a).¹⁸ Dr. Kothakota was additionally requested to provide all diagnosis found and to explain which, if any, diagnoses were medically connected to the accepted employment injury.

In an April 16, 2018 report, Dr. Kothakota noted that, based on a review of appellant's medical record, a statement of accepted facts (SOAF), and physical examination opined that appellant no longer had disability due to the accepted employment injury. He indicated that her right wrist ganglion cyst had completely subsided, but as it may recur, she would require treatment and thus she had some residuals of the ganglion cyst. Dr. Kothakota further opined that appellant's cervical spine findings were mostly age related and preexisting conditions and that none of the findings, which were seen radiologically including degenerative changes, were related to the 2005 employment injury. Based on his clinical examination and lack of any objective findings both radiologically and clinically, he opined that she could return to full-duty status, with minimal restrictions. Dr. Kothakota indicated that, while no ganglion cyst was seen on examination, the vast majority of people could function normally even with a small ganglion cyst. In an April 16, 2018 OWCP-5c form, he opined that appellant was capable of working full time with restrictions for medium level work. In a May 18, 2018 addendum, Dr. Kothakota clarified that the restrictions on heavy duty lifting were for her preexisting condition of cervical spondylosis, which was not related to her employment-related injury.

The Board finds that Dr. Kothakota's opinion, which is well rationalized and based upon a proper factual and medical history, constitutes the special weight of the medical evidence on the

¹⁷ As noted, Dr. Haskins had opined that appellant could work eight hours a day with no more than four hours of repetitive movements of the wrists. He indicated, in his March 9, 2017 report, that her complaints were excessive for a ganglion cyst and was suggestive of either symptom magnification and/or cervical radiculopathy.

¹⁸ 5 U.S.C. § 8123(a); *L.T.*, Docket No. 18-0797 (issued March 14, 2019).

issue of whether appellant has continuing disability causally related to her accepted ganglion cyst condition.¹⁹

Following Dr. Kothakota's report, appellant submitted a series of medical reports from Dr. Jackson discussing cervical conditions and restrictions due to an August 31, 2001 employment injury. Cervical diagnoses, however, have not been accepted under this claim. Additionally, Dr. Jackson has not opined in any of his reports if the reported cervical conditions are causally related to the accepted employment incident of December 30, 2005. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.²⁰ Thus, his reports are insufficient to overcome the special weight afforded to Dr. Kothakota's opinion.²¹

Appellant also submitted 2012 treatment notes from Dr. Shockley, previously of record. While Dr. Shockley opined, in his August 28, 2012 treatment note, that her cervical radiculitis and unspecified myalgia and myositis were related to her employment injuries of 2001 and 2002, he had not opined in any of his reports if the reported cervical conditions were causally related to the accepted employment incident of December 2005. Thus, his reports are also insufficient to overcome the special weight accorded to Dr. Kothakota's reports.²²

Appellant also submitted April 1, 2005 and April 26, 2006 reports from a licensed clinical social worker. Social workers, however, are not considered "physicians" as defined under FECA and thus their reports do not constitute competent medical opinion evidence.²³

The Board thus finds that appellant has not met her burden of proof to establish continuing employment-related disability or residuals, on or after December 10, 2017, due to the accepted employment injury.

On appeal appellant asserts that she has continuing disability due to her current physical conditions. As explained above, she has not met her burden of proof to establish continuing employment-related disability or residuals on or after December 10, 2017 due to the accepted employment injury.

¹⁹ See *L.C.*, Docket No. 18-1759 (issued June 26, 2019); *D.M.*, Docket No. 17-1052 (issued January 24, 2019).

²⁰ *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

²¹ See *S.S.*, Docket No. 17-1361 (issued January 8, 2018).

²² *Id.*

²³ Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); see also *C.A.*, Docket No. 18-0824 (issued November 15, 2018).

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation, effective December 10, 2017, as she no longer had disability due to the accepted December 30, 2005 employment injury. The Board further finds that appellant has not met her burden of proof to establish continuing disability on or after December 10, 2017 due to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board