

disability or residuals causally related to his accepted November 3, 2020 employment injury; and (2) whether OWCP properly determined that appellant abandoned his request for an oral hearing.

FACTUAL HISTORY

On November 3, 2020 appellant, then a 61-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 3, 2020 he injured his leg, arm, neck, shoulders, and back when the employing establishment vehicle he was operating was struck from the rear by a vehicle at a high rate of speed while in the performance of duty. He stopped work on the date of injury. OWCP accepted the claim for sprains of both shoulders, the cervical spine, and the right knee. It paid appellant wage-loss compensation for total disability on the supplemental rolls, effective January 30, 2021, and on the periodic rolls, effective February 28, 2021.

In an emergency room report dated November 3, 2020, Dr. Robert Hamilton, an emergency medicine specialist, noted that appellant related complaints of pain in the shoulders, knees, right elbow, left hip, neck, and back, as well as an abrasion and swelling of the right medial knee, which he attributed to being struck from behind while driving his postal van. His physical examination revealed pain with range of motion in the right knee, mild abrasions of the posterior right elbow and medial lower right knee, and muscular tenderness in the neck. Dr. Hamilton obtained x-rays of the pelvis, knees, right elbow, and shoulders, which were read as negative for fracture. He diagnosed abrasions and sprains of the cervical spine, knees, and shoulders.

Magnetic resonance imaging (MRI) scans of the cervical spine and right knee dated December 5, 2020 revealed mild cervical spondylosis with minimal C3-C4 and C4-C5 canal stenosis and mild chronic medial and patellofemoral compartment arthropathy, respectively.

In a medical report dated December 17, 2020, Dr. Gary J. Voytik, a Board-certified orthopedic surgeon, noted a history of the November 3, 2020 motor vehicle accident (MVA) and appellant's complaints. He performed a physical examination and reviewed the December 5, 2020 MRI scans. Dr. Voytik diagnosed sprains of both shoulders, cervical spine, and right knee. He recommended an injection for inflammation relief, which appellant declined, and physical therapy. In a separate note of even date, Dr. Voytik released appellant to return to work with the restrictions of no driving and no lifting.

An MRI scan of the left shoulder dated January 27, 2021 demonstrated supraspinatus tendinosis with minimal concealed instar-substance partial-thickness footprint tear, subscapularis tendinosis, intra-articular long head of the biceps tendinosis, chronic degenerative posterior superior labrum, and mild acromioclavicular (AC) degenerative arthrosis. An MRI scan of the right shoulder of even date demonstrated supraspinatus and subscapularis tendinosis, intra-articular bicapital tendinosis, and mild AC degenerative arthrosis.

In a follow-up report dated January 29, 2021, Dr. Voytik examined appellant and reviewed the January 27, 2021 shoulder MRI scans. He opined that the chronic degenerative nature of the labrum and osteoarthritis preexisted the MVA. Dr. Voytik continued appellant's work restrictions and referred him to a shoulder specialist.

In an April 1, 2021 report, Dr. Lucie E. Mitchell, Board-certified in physical medicine and rehabilitation, noted that appellant related complaints of right arm numbness and pain in the shoulders, neck, right knee, and arm, which he attributed to an MVA on November 3, 2020. She

reviewed his treatment and performed a physical examination, which revealed no swelling, erythema, or atrophy in the shoulders, intact range of motion (ROM) and strength, a positive Tinel's sign at the cubital tunnel, bilaterally, and tenderness to palpation of the right knee. Dr. Mitchell noted that appellant refused to allow a full examination due to concerns of pain but was able to internally rotate both shoulders while distracted. She diagnosed neck pain with cervical spondylosis, left shoulder pain, and right knee pain and recommended physical therapy, an electromyography and nerve conduction velocity (EMG/NCV) study of the upper extremities, and an injection in the left shoulder.

On April 23, 2021 Dr. Mitchell performed an intra-articular injection in the left shoulder.

On May 5, 2021 Dr. Mitchell performed an EMG/NCV study of the upper extremities, which revealed evidence of chronic denervation potentials in the right deltoid and biceps and left deltoid, biceps, and pronator teres, but no evidence of acute cervical radiculopathy. She opined that the results of the study demonstrated chronic changes without any acute or ongoing denervation potentials. Dr. Mitchell recommended physical therapy and noted that appellant reported 50 percent pain relief after the left shoulder injection.

In a follow-up report dated May 24, 2021, Dr. Mitchell indicated that appellant had pain and restricted range of motion in the left upper extremity due to disuse, which resulted in adhesive capsulitis. She performed a physical examination and noted that he refused range of motion testing of the shoulder but was able to complete internal rotation with distraction while placing his phone in his left back pocket. Dr. Mitchell further noted that appellant's symptoms of weakness and numbness in the hands were due to disuse, as he did not have atrophy of the intrinsic hand muscles, and her examinations of his cervical spine and knees were objectively normal. She also opined that his EMG/NCV findings showed chronic symptoms of cervical radiculitis, but no active radiculopathy.

Appellant underwent physical therapy treatment from June 30 through August 12, 2021.

In an attending physician's report (Form CA-20) dated July 21, 2021, Dr. Mitchell diagnosed left shoulder, neck, and right knee pain, and advised that he would be able to return to light work on September 1, 2021.

On November 1, 2021 OWCP prepared a statement of accepted facts (SOAF) which listed the accepted conditions as left shoulder sprain and impingement syndrome, right shoulder sprain, cervical spine sprain, cervicalgia, and right knee sprain.

On November 29, 2021 OWCP referred appellant, along with the medical record, SOAF, and a series of questions to Dr. Daniel Robert Schlatterer, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the nature and extent of his employment-related conditions and disability.

In a December 13, 2021 report, Dr. Schlatterer noted his review of the SOAF, as well as the medical evidence of record. He acknowledged that the SOAF indicated that appellant's claim was accepted for left shoulder sprain and impingement syndrome, right shoulder sprain, cervical spine sprain, cervicalgia, and right knee sprain. Upon examination, Dr. Schlatterer documented 50 percent active and passive ROM in all planes and asymmetric rotation, right greater than left, in the neck; a "crick" in the right side of the neck with extension and rotation; AC joint and subacromial tenderness bilaterally with widespread global tenderness of both shoulders, without

impingement; normal elbows and wrists; poor forced pinch of thumb and index finger, bilaterally; normal hands, except for left thenar flattening; and cog-wheeling throughout the neurological examination, which was otherwise normal. He indicated that the examination findings were largely non-organic. Dr. Schlatter opined that he “could find no current diagnosis within a degree of medical certainty that I could ascribe to an accident 13 months ago” and if appellant did have an injury at the time of his accident, it had resolved. Based upon appellant’s clinical presentation, he opined that appellant was capable of returning to his date-of-injury job without restrictions.

On January 6, 2022 OWCP issued a notice of proposed termination of appellant’s wage-loss compensation and medical benefits based on the December 13, 2021 second opinion examination report of Dr. Schlatterer. It afforded appellant 30 days to submit additional evidence or argument challenging the proposed termination.

By decision dated February 8, 2022, OWCP terminated appellant’s wage-loss compensation and medical benefits, effective that date, finding that the medical evidence of record established that he no longer had residuals or disability due to his accepted employment injury. The weight of the medical evidence was accorded to the opinion of the second opinion physician, Dr. Schlatterer.

OWCP thereafter received a medical report dated February 8, 2022 by Dr. Mitchell.

On March 5, 2022 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review. In support of the request, he submitted an undated statement and a narrative report by Dr. Mitchell dated March 4, 2022.

By notice dated May 13, 2022, OWCP’s hearing representative informed appellant that a telephonic hearing was scheduled for June 20, 2022 at 10:00 a.m. Eastern Standard Time (EST). The notice provided the toll-free number to call and appropriate passcode to access the hearing. The hearing representative mailed the notice to appellant’s last known address of record.

By notice dated May 16, 2022, OWCP’s hearing representative informed appellant that the hearing was rescheduled for June 17, 2022 at 10:00 a.m. EST. The hearing representative mailed the updated notice to appellant’s last known address of record.

By decision dated June 30, 2022, an OWCP hearing representative found that appellant had abandoned his request for an oral hearing as he had received written notification of the hearing 30 days in advance but failed to appear. The hearing representative further found that there was no indication in the case record that he had contacted the Branch of Hearings and Review either prior to or after the scheduled hearing to explain his failure to appear.

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.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

³ *R.G.*, Docket No. 22-0165 (issued August 11, 2022); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

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 compensation.⁶ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 8, 2022, as he no longer had disability or residuals causally related to the accepted November 3, 2020 employment injury.

OWCP based its decision to terminate appellant's wage-loss compensation and medical benefits on the December 13, 2021 opinion of Dr. Schlatterer, OWCP's second opinion physician, who found that the accepted conditions of left shoulder sprain and impingement syndrome, right shoulder sprain, cervical spine sprain, cervicgia, and right knee sprain had resolved with no residuals and no further medical treatment was needed. Dr. Schlatterer further opined that appellant was capable of performing his time-of-injury job without restrictions. He described the November 3, 2020 employment injury, noting the accepted conditions as set forth in the SOAF. Dr. Schlatterer further noted appellant's physical examination findings, which were largely non-organic including widespread global tenderness of both shoulders and cog-wheeling throughout the neurological examination. He noted the accepted diagnoses and opined that there was no relationship or correlation between the objective findings and appellant's current subjective complaints. He further opined that if appellant did have an injury at the time of his accident, it had resolved.

The factors that comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of physical examination, the accuracy, or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁸

The Board finds that OWCP properly determined that Dr. Schlatterer's opinion constitutes the weight of the medical opinion evidence. Dr. Schlatterer based his opinion on a proper factual and medical history and physical examination findings. He noted that appellant's physical examination indicated subjective findings, which did not correlate with objective findings and the

⁴ See *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁵ *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁷ See *A.G.*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

⁸ *K.R.*, Docket No. 22-0019 (issued July 11, 2022); *B.C.*, Docket No. 16-0978 (issued November 21, 2016); *Nicolette R. Kelstrom*, 54 ECAB 570 (2003); *Anna M. Delaney*, 53 ECAB 384 (2002); see also *G.I.*, Docket No. 14-1857 (issued September 9, 2015).

history of appellant's employment injury. Dr. Schlatterer further opined that he could resume his time-of-injury position without restrictions. The Board finds that his opinion is sufficiently probative, rationalized, and based upon a proper factual background⁹ and it represents the weight of the medical evidence at the time of the February 8, 2022 termination decision. Accordingly, OWCP properly relied on his second opinion report in terminating appellant's wage-loss compensation and medical benefits for the November 3, 2020 employment injury.¹⁰

Dr. Mitchell, in her May 24, 2021 report, indicated that appellant had pain and restricted range of motion in the left upper extremity and symptoms of weakness and numbness in the hands, all due to disuse as no objective atrophy was present. She further noted that he refused range of motion testing in the shoulders but could complete internal rotation with distraction, had an objectively normal examination of the cervical spine and knees, and that his EMG/NCV findings showed chronic symptoms of cervical radiculitis but no active radiculopathy. In a Form CA-20 dated July 21, 2021, Dr. Mitchell diagnosed left shoulder, neck, and right knee pain, and advised that appellant would be able to return to light work on September 1, 2021. However, she did not address in either report whether he continued to have residuals or disability due to his accepted employment-related conditions, based upon objective medical findings. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value.¹¹

As the reports from Dr. Mitchell are insufficient to overcome the weight of the medical evidence accorded to Dr. Schlatterer's second opinion, or to create a conflict of medical opinion, the Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 8, 2022.

LEGAL PRECEDENT -- ISSUE 2

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.¹² Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.¹³ OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.¹⁴

⁹ *B.C., id.; A.B.*, Docket No. 16-0480 (issued August 29, 2016).

¹⁰ *J.T.*, Docket No. 20-1470 (issued October 8, 2021); *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *see also A.F.*, Docket No. 16-0393 (issued June 24, 2016).

¹¹ *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹² 20 C.F.R. § 10.616(a).

¹³ *Id.* at § 10.617(b).

¹⁴ *A.R.*, Docket No. 19-1691 (issued February 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *Michelle R. Littlejohn*, 42 ECAB 463(1991).

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.¹⁵

The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing.

The record establishes that on May 16, 2022 in response to appellant's request for an oral hearing, a representative of OWCP's Branch of Hearings and Review properly mailed a notice of the scheduled telephonic hearing to be held on June 17, 2022 at 10:00 a.m., EST. The hearing notice was mailed to appellant at his last known address of record and provided instructions for participation. Appellant, however, failed to call in for the scheduled hearing using the provided telephone number and passcode. He did not request a postponement or provide an explanation to OWCP for his failure to attend the hearing within 10 days of the scheduled hearing. The Board, thus, finds that OWCP properly determined that appellant abandoned his request for a telephonic oral hearing.¹⁷

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 8, 2022, as he no longer had disability or residuals causally related to the accepted November 3, 2020 employment injury. The Board further finds that OWCP properly determined that he abandoned his request for an oral hearing.

¹⁵ *Supra* note 12 at § 10.622(f).

¹⁶ *Id.*; *M.C.*, Docket No. 21-0351 (issued June 29, 2021); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011); *see also A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 8 and June 30, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 11, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board