United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 17-0781**
	)	**Issued: August 1, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Miami, FL, Employer	)	

Appearances:
Anthony Arenas, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 24, 2017 appellant, through her representative, filed a timely appeal from a September 28, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective December 2, 2015, as she had no residuals of her accepted August 14, 1997 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 20, 1997 appellant, then a 32-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 14, 1997 she sustained injuries from a motor vehicle accident while in the performance of duty. OWCP assigned File No. xxxxxx965 and accepted the claim for cervical, lumbar and thoracic sprains, and later expanded the acceptance of the claim to include a temporary aggravation of depression and adjustment reaction. Appellant had previously filed claims with OWCP which have been administratively combined with the present file.[4]

Appellant stopped work on November 3, 1998, and has not returned.

The record reflects that appellant received intermittent medical treatment, to include once in 2005, twice in 2007, once in 2008, once in 2010, once in 2012, once in 2013, and twice in 2014.[5] From 2005 to 2014, her treatment for her work injuries was with Dr. Antonio DeFilippo, a Board-certified psychiatrist.

In a December 16, 2014 report, Dr. DeFilippo advised that appellant remained under his care for the treatment of severe depression, recurrent with anxiety. He explained that she continued experiencing difficulty with lack of focus and concentration. Dr. DeFilippo indicated that appellant's symptoms were still present, were permanent, and she was therefore unable to work at this time. He noted that her current treatment included medication and routine monitoring.[6]

On June 3, 2015 OWCP received a June 1, 2015 report of investigation from the employing establishment's Office of the Inspector General (OIG). The OIG report revealed that, for the

[3] Docket No. 02-2236 (issued March 26, 2003). In the prior appeal, the Board found that appellant's April 22, 2002 request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.

[4] Under File No. xxxxxx618, appellant alleged that on November 21, 1991, she sustained injuries from a dog bite while in the performance of her federal duties. OWCP accepted the claim for a dog bite of the lower left leg. Under OWCP File No. xxxxxx739, appellant alleged that on May 17, 1995 she injured her neck while in the performance of duty. OWCP accepted the claim for a neck sprain. Under OWCP File No. xxxxxx260, appellant filed an occupational disease claim (Form CA-2) on September 7, 1996 alleging a right hand condition due to casing mail in the performance of duty. OWCP accepted the claim for right carpal tunnel syndrome. It combined these three cases, with File No. xxxxxx618 as the master file number for these claims. None of the other cases combined under master File No. xxxxxx618, including the master case, are open for benefits or are a part of the present appeal.

[5] Additionally, in 2008 appellant sought treatment for her nonwork-related fibromyalgia.

[6] Appellant also had a second opinion examination on May 20, 2008 with Dr. Melvin Drucker, a Board-certified orthopedic surgeon. The record reflects that she has not seen an orthopedist since 2008.

period January 21 to May 26, 2015, appellant was engaged in activities which appeared to be inconsistent with her injuries and medical restrictions.[7] It was also noted that she saw approximately 31 physicians for her work injuries. Additionally, the OIG report noted that Dr. Shelly Wolland, a family practitioner and an attending physician, had a restricted medical license. It indicated that they had referred the case to prosecution. The OIG alleged that appellant consistently participated in physical activities inconsistent with her stated medical condition and restrictions and failed to notify the employing establishment or the Department of Labor of her ability to return to work in a full-duty capacity.

By memorandum dated June 17, 2015, OWCP described the OIG's video surveillance, as well as still photographs taken from the video surveillance. The report detailed appellant talking on the cellphone, shopping, driving, pumping gas, lifting, pushing, pulling, bending, conversing

[7] The OIG report contained a description of the activities they observed appellant performing in detail. OWCP accepted as factual that on January 21, 2015, she was observed walking, driving to a psychologist's office, McDonald's, Antique store, and Starbucks or Tijuana Flats restaurant, opening/closing doors and talking on a cellphone, all in the presence of her daughter. On January 22, 2015 appellant was observed walking, bending, having full use of her upper extremities, driving her daughter to a Starbucks, an apartment, unloading luggage from her jeep, walking with her daughter while pulling a suitcase on Washington Avenue, Miami (for approximately one-quarter mile). On January 23, 2015 she was observed walking, bending, having full use of her upper extremities, talking on her cellphone (while driving and walking), driving with her daughter to a psychotherapist's office, Starbucks, AT&T store, Antiques and More store, Chic Fila Restaurant, and Whole Food Market. On January 30, 2015 appellant was observed driving, walking, bending, carrying a stack of storage containers and placing them into a vehicle, standing, socializing, smiling and laughing with her daughter and another person, in front of an Antiques and More Store.

On May 13, 2015 appellant was observed walking, standing, driving, eating in a restaurant, smiling, and laughing. Additionally, at Home Depot, she was picking up a large box, placing it in a shopping cart and pushing this shopping cart. Furthermore, appellant was observed dropping her daughter off at a Dentist Office or Tutoring place then driving to several stores and picking up her daughter.

On May 15, 2015 appellant was observed driving, walking, opening/closing doors, going to J&M Fitness (gym) for one hour, talking on cellphone, going to and shopping at a thrift store, standing, having full use of upper extremities, keeping left arm bent while holding a tablet under this arm and simultaneously and using right arm to look through clothes hanging from a rack, bending her neck to the right, extending/raising right arm above head and to her right side, socializing with clerk at cash register, holding clothing items with her left arm and bending forward, squatting while holding clothing items with her left arm and using right arm to go through clothing items on a rack, going through clothing items with her right hand while bent forward approx. Ninety degrees, extending left arm, bending down and picking up a large storage container with both upper extremities and loading it into her jeep, driving to a store, bending neck forward, driving to apartment, unload the storage container from her jeep and pulling it to an apartment on the top floor, driving to another store and drive home.

On May 18, 2015 appellant was observed driving, closing/opening doors, carrying a purse with her right arm and another object with her right hand above her right shoulder, standing, bending, talking on a cellphone with her right hand, bending both arms, bending her neck back and sideways, shopping while talking on cellphone, pushing a shopping cart while walking and talking on a cellphone, reaching above her left shoulder with her left hand, full use of upper extremities, and reaching with both arms.

On May 19, 2015 appellant was observed carrying items into her house numerous times from a black colored vehicle. She was observed bending her neck forward, having full use of her upper extremities, walking, laughing, smiling, and socializing.

On May 20, 2015 appellant was observed driving to and shopping at various stores, having full use of her upper extremities, talking on her cellphone, carrying a shopping bag, walking, standing, bending forward 90 degrees, opening/closing doors, bending neck forward, turning neck to the right, and abducting both shoulders.

with several individuals socially, getting in and out of a jeep-type vehicle, lifting a large suitcase, plastic bins, and a large box from a vehicle, picking up a very large outdoor storage-type container from her vehicle and carrying it upstairs to her apartment, reaching and sorting through clothes racks at various heights, interacting in public places, laughing, and entering and leaving from a public gym while dressed in workout clothing.

By letter dated June 23, 2015, OWCP referred appellant for a second opinion, along with a statement of accepted facts (SOAF), a set of questions, and the medical record to with James A. Jordan, M.D., a Board-certified psychiatrist. It also provided a copy of the OIG's video surveillance to the physician.

On that same date, OWCP also provided a copy of the SOAF and a copy of the OIG's video surveillance to Dr. DeFilippo. It requested his opinion as to whether appellant continued to have residuals attributable to her August 14, 1997 work injury and whether she was capable of working. OWCP also provided her with a copy of their letter to Dr. DeFilippo.

On June 26, 2015 OWCP referred appellant for a second opinion, along with a SOAF, a set of questions and the medical record to Dr. Peter J. Millheiser, a Board-certified orthopedic surgeon. It also provided a copy of the OIG's video surveillance.

On July 7, 2015 OWCP again provided Dr. DeFilippo with the SOAF and a copy of the OIG's video surveillance.

In a July 13, 2015 report, Dr. Millheiser noted appellant's history of injury and treatment and provided examination findings. He noted that she cried during various parts of his examination, but he found that she was in no acute distress. Dr. Millheiser found no cervical tenderness, no trigger points, no spasm, normal cervical lordosis, no scars, no ecchymosis or abrasions, normal scapula, no motor loss of the extremities, equal and active reflexes, no atrophy of the upper or lower extremities, normal gait and station, no tilt, and no list. He noted that appellant had mild restriction of cervical spine motion, no motor loss or atrophy in the upper extremities, and found that sensory examination revealed hypesthesia in all the fingertips. Dr. Millheiser advised that she did not use an orthosis. Regarding the thoracic spine, he found mild restriction of thoracic spine motion and no tenderness. Dr. Millheiser found no thoracic spine dysrhythmia, surgical scars, scoliosis, list, tilt, spasm, or trigger points. For the lumbar spine, he found a normal gait and station, moderate restricted range of motion of the lumbar spine, no lumbar tenderness present, no spasm, trigger points, tilt, list, or sciatic scoliosis. Dr. Millheiser also found a normal motor examination of the lower extremities, hypesthesia of all the toes, equal knee and ankle reflexes, negative straight leg raising, and no atrophy. He diagnosed cervical and lumbar sprains, diabetic neuropathy, and depression by history. Dr. Millheiser noted while appellant had multiple complaints in her cervical, thoracic, and lumbar spine, she had no significant objective findings. He concluded that her examination was unremarkable. Dr. Millheiser explained that there were no objective findings referable to appellant's accident. He noted that he did not evaluate her psychological problems, but as far as her orthopedic problems were concerned, there were no objective findings and she could do the same work she was doing at the time of the accident. Dr. Millheiser opined that appellant needed no further medical testing or treatment for her cervical or lumbar spine.

In an August 17, 2015 report, Dr. DeFilippo noted that he could only offer a status restricted to his specialty as her psychiatrist. He explained that appellant came under his care on January 7, 2008 for the treatment of post-traumatic stress disorder and major depressive disorder. Dr. DeFilippo indicated that he had previously opined that the August 14, 1997 employment injury caused a decline to her mental stability. He indicated that appellant continued under his care for the treatment of her mental disorders. Dr. DeFilippo explained that the primary cause of her disability continued to be the physical injuries she suffered from the accident. He advised that it was inappropriate for him to "complete the requested SOAF," because the observer's report and questionnaire referred to appellant's current physical status and limitations. Dr. DeFilippo suggested that OWCP obtain opinions regarding her current physical status from her other treating medical specialists.

By report dated September 30, 2015, Dr. Jordan described appellant's history of injury and treatment and noted examination findings. He also indicated that he had reviewed the SOAF, which revealed that she had a temporary aggravation of depression and adjustment disorder. Dr. Jordan found that appellant had fibromyalgia and herniated discs, and claimed to be in constant pain. Additionally, appellant was on Metformin, because she weighed 190 pounds and did not want to be a diabetic. Dr. Jordan also noted that she had joined a gym, but did not go, as she spent most of her time in bed and "had no desire to do anything." He advised that appellant was periodically tearful during the examination, but she presented with no signs or symptoms of anxiety or psychosis. Dr. Jordan explained that there was no evidence of any continued distress associated with the accident of 1997. He confirmed that he had viewed the video and described the video surveillance activities. Dr. Jordan opined that appellant's temporary aggravation of depression and adjustment reaction ended six to nine months after the accident, and explained that she no longer had residuals of that condition, which had resolved. He opined that she could return to her work as a letter carrier.

On October 21, 2015 OWCP issued a notice of proposed termination of compensation. It proposed to terminate appellant's wage-loss compensation and medical benefits under File No. xxxxxx965 because that the weight of the medical evidence, as represented by the reports of Drs. Millheiser and Jordan, established that the residuals of the work injury had ceased.

In response to the notice of proposed termination of compensation appellant submitted new evidence.

In a November 18, 2015 report, Dr. Mariana Martinasevic, a Board-certified psychiatrist, noted that she saw appellant for a second opinion regarding appellant's ability to work as a mail carrier. She related that appellant had a history of depressed mood, a disturbing level of anxiety, lack of energy and motivation, limited social exposure, insomnia, and debilitating neck and back pain since the accident while on duty as a mail carrier. Dr. Martinasevic found that appellant continued with problems such as flash backs soon after the accident; but it had ceased. However, she noted that appellant would continue to be upset after noticing a driver using a cellphone while driving, since that was the cause for her accident. Dr. Martinasevic advised that appellant did not have any substantial improvement in her emotional or overall functioning despite treatment with a number of psychotropic medications. She noted that appellant continued to be treated with Wellbutrin XL for almost a year, but had no significant benefit. The mood was described as depressed with frequent crying spells, a sense of hopelessness and guilt. Appellant was having sleepless nights and had to "have a TV on all night long in order to get some sleep."

Dr. Martinasevic conducted a mental status examination and found that appellant presented with symptoms of dysthymia and anxiety disorder. She opined that these symptoms appeared to "be still very disturbing." Dr. Martinasevic explained that there were previous attempts to address these problems using alternative strategies (acupuncture, "natural remedies") as well as psychotherapy (brief engagement); however, no significant improvement was gained. She opined that appellant did "not appear to be able to provide and/or sustain functional level expected for [appellant's] previous job. At this point, it would be nearly impossible to determine the correlation between her present pathology and trauma caused by the car accident."

In a November 25, 2015 report, Dr. Paul W. Wu, Board-certified in physical medicine and rehabilitation, noted that he recently evaluated appellant in regard to her motor vehicle collision in 1997. He opined that her prognosis at this time was indefinite as she was a "chronic injured worker." Dr. Wu noted that appellant treats with multiple physicians. He diagnosed: lumbar disc herniation, lumbar radiculopathy, chronic pain syndrome, and chronic low back pain. Dr. Wu explained that appellant's future plan continued to be interventions with possible medication if indicated. He requested that she return for facet joint nerve blocks. Dr. Wu advised that appellant had one performed a year ago that helped her for one week. He explained that, due to the long duration since that testing, this would be repeated with plans to move forward to ablation if indicated. Dr. Wu also noted that a review of her magnetic resonance imaging (MRI) scan revealed an L5 annular tear, which might require an epidural or intradiscal procedure in the future and that would be reassessed. He explained that, prognosis wise, appellant would "require continuing medical care. [Appellant's] condition is likely to last indefinitely."

By decision dated December 2, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits effective December 2, 2015. It found that the weight of medical evidence rested with Drs. Millheiser and Jordan, which supported that she no longer had residuals of the accepted work-related conditions. OWCP explained that, while appellant submitted reports from Drs. Martinasevic and Wu, neither physician seemed aware of appellant's actual accepted work-related conditions, or her actual abilities to drive, shop, walk, bend, twist, and interact and socialize with people, which was inconsistent with the disability her physicians described. It found that there was no current medical evidence reflecting recent treatment, which cast doubt on their opinions. OWCP also noted that appellant provided no evidence she had been in current treatment, which casts doubt on the employing establishment of the history understood by Drs. Martinasevic and Wu, as they both appeared to believe that appellant was in constant need of medical care. It explained that neither physician explained how or why appellant's accepted work injuries of sprains, adjustment reaction, and aggravation of depressive disorder would remain, or how appellant's current condition could be due to her accepted work conditions.

On December 28, 2015 appellant requested a hearing, which was held before an OWCP hearing representative on August 8, 2016.

During the hearing, appellant testified that the other four or five second opinion physicians she was sent to indicated that she continued to have work-related depressive disorder and she cannot return to work, until she saw Dr. Jordan. She also argued that the SOAF that Dr. Jordan used was erroneous because it stated that her claim was accepted for a temporary depressive disorder. Appellant argued that her claim was accepted for a full-time depressive disorder, not temporary and as such, this gave Dr. Jordan the wrong impression. She denied seeing the video that revealed her various daily activities.

Appellant's representative repeated appellant's argument regarding the accepted conditions listed in the SOAF, and as such he claimed the report of the psychiatrist was inaccurate. He also argued that she must be shown a copy of the surveillance video provided to the physician and be provided with an opportunity to explain to the physician her side of the observed activities. Appellant's representative argued that appellant was not given this opportunity. Furthermore, he argued that Dr. Jordan's opinion that her temporary aggravation ended six to nine months after the accident was subjective, as Dr. Jordan did not see her then. Appellant's representative further argued that Drs. Millheiser and Jordan's opinions were not based upon a proper factual history and that the termination must be reversed, as appellant was not given the opportunity to give her side about the video information.

Appellant testified that she did see a physician multiple times for her work injury in 2015 and saw Dr. DeFilippo almost monthly, as well as Dr. Wu. She testified that her MRI scan report supported that her condition was due to the accident. Appellant also explained that, in relation to the video surveillance and her ability to work, she was a single mother, and had to work with pain unfortunately. She also argued that no one saw her at night when her daughter had to carry her to bed almost daily as she could not afford to hire to do things for her. Additionally, while appellant was able to engage in the activities seen in the video, they were part of her daily life to survive. She explained that "she pays for it big time at night when she has to take so many pain pills."

Appellant explained that she attempted to go to the gym and she was diagnosed with diabetes. However, she made several attempts to exercise, but she could not do it, because of her limitations and that she got out of the contract due to pain.

The record was held open for 30 days to allow for the submission of additional evidence. No additional evidence was received.

By decision dated September 28, 2016, OWCP's hearing representative affirmed the December 2, 2015 decision. She found that the record contained no medical opinion evidence from a physician, based upon a complete and accurate history, which addressed how appellant could continue to have residuals of her accepted work injury of August 14, 1997. The hearing representative found that the weight of the medical opinion evidence continued to rest with Drs. Jordan and Millheiser. She found that the reports were based upon a proper factual and medical history and were well rationalized, and supported that appellant no longer had residuals of her accepted work injury. The hearing representative explained that there was no medical opinion evidence from a physician that disagreed with the opinions of Drs. Millheiser and Jordan. She found that OWCP met its burden of proof to terminate appellant's medical and wage-loss compensation benefits.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden of proof to justify modification or termination of benefits.[8] Having determined that an employee has a disability

[8] *Curtis Hall*, 45 ECAB 316 (1994).

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.[9]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[10] 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.[11]

ANALYSIS

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits effective December 2, 2015, as she had no residuals of her accepted August 14, 1997 employment injury.

OWCP accepted that appellant sustained cervical, lumbar, and thoracic sprains, and later expanded the acceptance of the claim to include a temporary aggravation of depression and adjustment reaction due to her accepted August 14, 1997 employment injury. Following receipt of an OIG Investigative Report and surveillance materials OWCP scheduled second opinion evaluations with Drs. Millheiser and Jordan to evaluate the status of her accepted physical and psychological conditions, and for recommendations for further medical treatment.

In a July 13, 2015 report, Dr. Millheiser noted appellant's history of injury and treatment and provided examination findings. He noted that, while she cried during various parts of his examination, he found that she was in no acute distress. Dr. Millheiser found no cervical tenderness, no trigger points, no spasm, normal cervical lordosis, no scars, no ecchymosis or abrasions, normal scapula, no motor loss of the extremities, equal and active reflexes, no atrophy of the upper or lower extremities, normal gait and station, no tilt, and no list. He found that appellant had mild restriction of cervical spine motion, no motor loss or atrophy in the upper extremities, and found that sensory examination revealed hypesthesia in all the fingertips. Dr. Millheiser also advised that she did not use an orthosis. Regarding the thoracic spine, he found mild restriction of thoracic spine motion and no tenderness. Dr. Millheiser found no thoracic spine dysrhythmia, surgical scars, scoliosis, list, tilt, spasm, or trigger points. He examined the lumbar spine and found a normal gait and station, moderate restricted range of motion of the lumbar spine, no lumbar tenderness present, no spasm, trigger points, tilt, list, or sciatic scoliosis. Dr. Millheiser also determined that appellant had a normal motor examination of the lower extremities, hypesthesia of all the toes, equal knee and ankle reflexes, negative straight leg raising, and no atrophy. He diagnosed cervical and lumbar sprains, diabetic neuropathy, and depression by history. Dr. Millheiser noted while appellant had multiple complaints in her cervical, thoracic, and lumbar spine, she had no significant objective findings. He noted that her examination was unremarkable. Dr. Millheiser explained that there were no objective findings referable to appellant's accident. He explained that he did not evaluate her psychological problems, but as far as her orthopedic problems are concerned, there were no objective findings and she could do the

[9] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[10] *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

[11] *L.H.*, Docket No. 17-1859 (issued May 10, 2018); *Kathryn E. Demarsh, id.; James F. Weikel*, 54 ECAB 660 (2003).

same work she was doing at the time of the accident. Dr. Millheiser opined that appellant needed no further medical testing or treatment for her cervical or lumbar spine. The factors that comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of examination, the employing establishment 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.[12] The Board finds that the report of Dr. Millheiser provided appropriate objective findings and explained his opinion that appellant's orthopedic conditions had resolved without residuals and required no further medical testing or treatment. The Board finds that he explained with rationale how her condition had resolved.

By report dated September 30, 2015, Dr. Jordan described appellant's history of injury and treatment and noted examination findings. He also indicated that he had reviewed the SOAF, which revealed that she had a temporary aggravation of depression and adjustment disorder. Dr. Jordan explained that appellant was periodically tearful during the examination, however, she presented with no signs or symptoms of anxiety or psychosis. He determined that there was no evidence of any continued distress associated with the accident of 1997. Dr. Jordan confirmed that he had viewed the video and described the video surveillance activities. He opined that appellant's temporary aggravation of depression and adjustment reaction ended six to nine months after the accident, and explained that she no longer had residuals of that condition, which had resolved and could return to her work as a letter carrier. The Board notes that Dr. Jordan examined her, provided findings and explained how he arrived at his conclusion that appellant no longer suffered residuals from her accepted condition.

The Board finds that the reports from Drs. Millheiser and Jordan are sufficiently detailed and based upon a proper history of injury such that they are entitled to the weight of medical evidence. They provided sufficient medical rationale, based upon an accurate history, and appellant's examination findings, to support their opinions that she no longer has disability or residuals related to her accepted work injury.

In support of her continuing mental disability appellant relied upon the records of Dr. DeFilippo. The Board notes that Dr. DeFilippo, the treating physician was provided with the same SOAF and the same OIG video. Dr. DeFilippo provided an August 17, 2015 report and noted that he could only offer a status update restricted to appellant's specialty as his psychiatrist. He explained that appellant came under his care on January 7, 2008 for the treatment of post-traumatic stress disorder and major depressive disorder. Dr. DeFilippo indicated that he had previously opined that the August 14, 1997 injury caused a decline to her mental stability. He indicated that appellant continued under his care for the treatment of her mental disorders. Dr. DeFilippo explained that the primary cause of her disability continued to be the physical injuries she suffered from the accident. He advised that it was inappropriate for him to comment because the observer's report and questionnaire referred to appellant's current physical status and limitations. However, Dr. DeFilippo did not explain why she continued to suffer residuals from her accepted employment injuries. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[13] This is particularly important in light of the surveillance from the OIG which evinced appellant's

[12] *See C.D.*, Docket No. 17-1623 (issued February 20, 2018); *see also M.D.*, 59 ECAB 211 (2007).

[13] *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

current mental state in the form of her activities of daily living. Additionally, Dr. DeFilippo never indicated that he disagreed with the findings of Dr. Jordan. Therefore, for these reasons, his opinion is insufficient to establish appellant continues to have residuals of her accepted work injury.

Likewise, the Board notes that the November 18, 2015 report from Dr. Martinasevic does not support continued residuals of the accepted orthopedic injury. While Dr. Martinasevic advised that appellant's symptoms appeared to be very disturbing and with no significant improvement after treatment, she opined "at this point, it would be nearly impossible to determine the correlation between [appellant's] present pathology and the trauma caused by her car accident." The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.[14] Furthermore, Dr. Martinasevic did not address the surveillance video, nor did she discuss Dr. Jordan's opinion. Her opinion is insufficient to support that appellant continues to have residuals of her accepted work injury.

Additionally, in a November 25, 2015 report, Dr. Wu noted that appellant was in a car accident in 1997 and opined that her condition is likely to last indefinitely. However, he did not explain how he arrived at this conclusion. Terms such as "probably" or "likely" need not constitute a speculative opinion, depending upon the context of usage. Such words may mean that the physician is expressing reasonable certainty, as opposed to absolute certainty.[15] However, without a rationalized opinion explaining how her condition was going to last indefinitely, the report from Dr. Wu is of limited probative value. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[16] Dr. Wu's opinion is insufficient to support that appellant continues to have residuals of her accepted work injury.

Because appellant no longer has residuals or disability related to her accepted employment conditions, OWCP properly terminated her wage-loss compensation and medical benefits effective December 2, 2015.

On appeal appellant's representative argues that the report from the second opinion physician was not valid because the superseding SOAF made mention of a surveillance video and that appellant was not provided with a copy of the video surveillance for comment. He also argued that she was not given the opportunity to explain her activities and how she was accomplishing them with the aid of medication before or after. However, the record reflects that a copy of the video was provided to appellant's physician, by letter dated June 23, 2015 and he was afforded an

[14] *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

[15] *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

[16] *J.M.*, 58 ECAB 478 (2007); *D.E.*, 58 ECAB 448 (2007); *G.G.*, 58 ECAB 389 (2007); *L.D.*, 58 ECAB 344 (2007); *A.D.*, 58 ECAB 149(2006).

opportunity to provide his opinion regarding the contents. Furthermore, he argued that did not indicate whether the physicians were given a full or unedited version of the video surveillance and thus it was not a truthful picture of appellant's abilities. The Board notes that there is no indication that any of the physicians were provided with anything other than the video described. The Board notes that his arguments regarding the SOAF and does not find any evidence of any misleading material. The SOAF correctly identified the accepted mental conditions as temporary. The Board notes that these arguments have been addressed and do not show that OWCP committed any error when it met its burden to terminate her compensation and medical benefits effective December 2, 2015.

CONCLUSION

The Board finds that OWCP met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective December 2, 2015, as she had no residuals of her accepted August 14, 1997 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 1, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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