

**United States Department of Labor
Employees' Compensation Appeals Board**

J.B., Appellant

and

**U.S. POSTAL SERVICE, PORTLAND
PERFORMANCE CLUSTER, Portland, OR,
Employer**

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**Docket No. 13-962
Issued: September 25, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 11, 2013 appellant filed a timely appeal from the September 12, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate medical benefits.

FACTUAL HISTORY

On August 1, 2005 appellant, then a 49-year-old human resources specialist, filed a traumatic injury claim alleging that on July 27, 2005 she injured her right knee and hands when

¹ 5 U.S.C. § 8101 *et seq.*

she tripped and fell over a curb. OWCP accepted her claim for contusion of the right knee and contusion of the right hand and paid appropriate benefits. Appellant retired in October 2006.

On August 3, 2009 OWCP issued a notice of proposed termination finding that appellant no longer had residuals of the accepted work injury requiring medical treatment. Appellant did not submit any additional evidence or argument within the allotted 30 days. By decision dated September 3, 2009, OWCP terminated authorization for medical benefits.

Appellant requested reconsideration and submitted additional evidence.

Dr. Anne M. Hirsch, a Board-certified internist, opined in a June 17, 2010 report that appellant's ongoing persistent right hand symptoms were directly related to the July 27, 2005 work injury. She noted the history of injury, relating that appellant sustained a significant abrasion with some gravel tattooing of the palmar thenar eminence of her right hand. Dr. Hirsch also related a history of medical treatment of appellant's right hand, including an April 14, 2010 surgery for right trigger thumb and stated that nothing has relieved her ongoing pain, atrophy or tendency for her hand to curl unnaturally.

In an August 18, 2010 report, Dr. McPherson S. Beal, III, appellant's treating physician, a Board-certified hand surgeon, related that his physical examination of appellant revealed unchanged fascial thickening of the right thenar eminence without any evidence of significant dysfunction on examination and with no pathological lesions which would be expected to cause the degree of pain or disability of which appellant complained. He related: "I asked her why she has continued to return to me for evaluation despite the fact that I presented her with the same opinion at each of [her] multiple prior visits. [Appellant's] immediate response was that this was an on-the-job injury and she expects monetary compensation for it, and that I was her original treating physician and that each of the multiple doctors whom she has had examine her hand have advised her to return to me for any additional treatment." Dr. Beal concluded that he saw no further role for physical therapy, that she was a poor candidate for surgical intervention and that she did not have any objective lesions which would justify any significant treatment and that he could not provide anything further for her.

This case has previously been before the Board. In a December 20, 2011 decision, the Board found that OWCP improperly denied appellant's request for reconsideration of OWCP's September 3, 2009 merit decision terminating her medical benefits.² The Board found that the June 17, 2010 report of Dr. Hirsch was new and relevant evidence to the underlying issue of whether appellant continued to suffer residuals of her accepted right hand contusion, requiring further medical treatment. The Board set aside the October 3, 2010 OWCP decision and remanded the case for an appropriate final decision on the merits. The facts of the case are set forth in the Board's prior decision and are incorporated herein by reference.

OWCP thereafter referred appellant for a second opinion examination with Dr. Aleksandar Curcin, a Board-certified orthopedic surgeon, for a determination of whether she suffered from any residual effects of the accepted hand contusion requiring additional medical

² Docket No. 11-1067 (issued December 20, 2011).

treatment. The July 27, 2012 statement of accepted facts noted that on April 14, 2010 appellant underwent right trigger thumb surgery not authorized by OWCP.

In an August 24, 2012 report, Dr. Curcin noted the history of injury, reviewed the medical records provided and noted examination findings. During the examination, appellant demonstrated self-restriction in the use of the right upper extremity and palpatory examination of the hand was difficult and aborted due to hypersensitivity to even light touch. Dr. Curcin diagnosed resolved right knee contusion and right hand contusion with thickening of the thenar eminence as related to the claim. Regarding the latter diagnosis, he opined that appellant continued to suffer symptomatic residuals of the work-related injury to her hand and the prognosis was poor given the chronicity of her condition. Dr. Curcin concluded that she did not require further medical treatment. He also filled out a work capacity evaluation stating that appellant had no physical restrictions.

No additional evidence was received from appellant.

By decision dated September 12, 2012, OWCP denied modification of its prior decision. It found that Dr. Curcin's August 24, 2012 report represented the weight of the medical evidence and established that appellant did not require further medical treatment.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.³ To terminate authorization for medical treatment OWCP bears the burden to establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

ANALYSIS

The Board finds that OWCP met its burden of proof to establish that appellant no longer required medical treatment for her accepted conditions.

At the time the Board last reviewed this record, it remanded the case to OWCP for merit review, based upon Dr. Hirsch's June 17, 2010 report. While Dr. Hirsch related that appellant had persistent right hand symptoms related to the July 27, 2005 injury, she also related that ongoing medical treatment had not relieved appellant's ongoing pain, atrophy or tendency for her hand to curl unnaturally. While Dr. Hirsch opined that appellant should be reimbursed for past medical expense related to her injury, she did not state that she would in fact require further medical care for her accepted right hand condition.

When the Board remanded the case to OWCP for merit review, the record also contained the August 18, 2010 report from Dr. Beal, who related that, while he had been appellant's treating physician initially following her injury, he did not understand why appellant continued

³ *Paul E. Stewart*, 54 ECAB 824 (2003).

⁴ *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Pamela K. Guesford*, 53 ECAB 726 (2002).

to return for medical evaluation. Dr. Beal related that physical therapy had not helped appellant, that she was not a surgical candidate and that he could not provide anything further for her.

OWCP referred appellant to Dr. Curcin in July 2012. Dr. Curcin's August 24, 2012 report further supports the termination of appellant's medical benefits. He related following the examination that her right knee contusion had resolved. The Board also finds that there is no medical evidence of record that appellant has residuals of the right knee contusion, which would require further medical treatment. Regarding appellant's right hand condition, Dr. Curcin explained that she had a right hand contusion with thickening of the thenar eminence and that she continued to have symptoms related to this condition, but he also explained that she self-restricted her right arm during examination, and that he had to abort palpatory examination of the hand because of her hypersensitivity to even light touch. He concluded that appellant did not require further medical treatment for her hand condition. The Board concludes that the weight of the medical evidence establishes that she does not need further medical treatment for her accepted conditions of right knee and right wrist contusion.

On appeal, appellant disagreed with OWCP's decision. She asserted that she still suffers from work-related injuries which should be covered under OWCP's medical benefits as opposed to her personal insurance plan. As noted, OWCP met its burden of proof to terminate appellant's medical benefits. Appellant also submitted additional evidence with her appeal. The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.⁵

Appellant may submit this or any new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's medical benefits.

⁵ 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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