

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

E.H., Appellant)	
)	
and)	Docket No. 19-1352
)	Issued: December 18, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Aberdeen, MD, Employer)	
)	

Appearances:
Andrew Douglas, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On June 4, 2019 appellant, through counsel, filed a timely appeal from a March 11, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

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.*

³ The Board notes that, following the March 11, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "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." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish continuing disability after August 21, 2016 causally related to her accepted May 18, 2015 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are set forth below.

On May 19, 2015 appellant, then a 53-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 18, 2015 she injured her left leg, hip, and shoulder and her right elbow when she stepped out of her truck to deliver mail to a box and the sidewalk crumbled while in the performance of duty. On the reverse side of the claim form, the employing establishment noted that she stopped work on May 19, 2015 and has not returned to work.

On July 17, 2015 OWCP accepted the claim for sprain of the left shoulder and upper arm acromioclavicular (AC) joint, and sprain of other specified sites of the left hip, left thigh, left knee, and left leg. Appellant underwent OWCP-authorized left knee arthroscopy and medial chondroplasty of the patellofemoral joint and lateral femoral condyle, which were performed on August 27, 2015 by Dr. John A. Prodoehl, an attending Board-certified orthopedic surgeon.

By decision dated July 28, 2016, OWCP terminated appellant's wage-loss compensation benefits, effective August 21, 2016, finding that the weight of the medical evidence rested with Dr. Kevin E. McGovern, a Board-certified orthopedic surgeon and OWCP impartial medical examiner (IME), who found that she no longer had disability causally related to her accepted May 18, 2015 employment injury and that she could return to full-duty work as a rural carrier.

Appellant, through counsel, subsequently requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. By decision dated December 27, 2016, an OWCP hearing representative affirmed the July 28, 2016 termination decision.

Appellant, through counsel, appealed to the Board. By decision dated December 15, 2017, the Board affirmed the July 28 and December 27, 2016 decisions.⁵ The Board found that OWCP had met its burden of proof to terminate her wage-loss compensation, effective August 21, 2016, based on the medical opinion of Dr. McGovern, OWCP's IME. The Board further found that appellant had not met her burden of proof to establish that she had continuing employment-related disability or conditions after that date causally related to the May 18, 2015 employment injuries.

In medical reports, work certificates, and prescription notes dated April 26, 2016 through October 30, 2018, Dr. Prodoehl listed left knee, left shoulder, and lumbar diagnoses that were not

⁴ Docket No. 17-0525 (issued December 15, 2017).

⁵ *Id.*

accepted by OWCP as related to the accepted May 18, 2015 injuries. He initially placed appellant on modified work⁶ and subsequently placed her off work on October 30, 2018 until further notice.

On December 11, 2018 appellant, through counsel, requested reconsideration of OWCP's termination decision. Counsel argued that accompanying relevant and pertinent new reports from Dr. Prodoehl and Dr. Harry A. Doyle, a Board-certified forensic psychiatrist, established that acceptance of her claim should have been expanded to include left shoulder impingement syndrome, tendinitis, and joint arthritis, left knee arthritis, major depressive disorder, and somatic symptom disorder (chronic pain syndrome). He also argued that the physicians' reports established that appellant had continuing disability after August 21, 2016 as a result of these conditions and that appellant's wage-loss compensation benefits should be reinstated effective that date.

In a November 28, 2018 letter, Dr. Prodoehl found that appellant had work-related left knee sprain, left hip and thigh sprain/strain, left AC joint strain, left shoulder impingement, left shoulder AC degenerative joint disease, left shoulder rotator cuff tendinitis, and left knee traumatic arthritis. He opined that, in addition to her accepted conditions, the May 18, 2015 employment injury had caused left shoulder impingement syndrome, AC degenerative joint disease, rotator cuff tendinitis, and left knee traumatic arthritis. Dr. Prodoehl indicated that impingement syndrome and rotator cuff tendinitis were related to conditions that could develop as a result of a shoulder injury. He further indicated that tendinitis is inflammation of the tendon in the rotator cuff and this inflammation was caused by irritation or damage. Dr. Prodoehl advised that impingement occurred when the rotator cuff tendon rubbed against the acromion and caused irritation and pain. He further advised that both of these conditions were associated with difficulty reaching overhead and weakness in the shoulder. Dr. Prodoehl explained that when the ground gave way on appellant on May 18, 2015 she fell onto her left side injuring her left upper extremity. This type of injury could cause inflammation in the shoulder and the rotator cuff tendon to become irritated and inflamed which leads to impingement with shoulder use. Dr. Prodoehl related that appellant had consistently shown positive impingement signs on physical examinations and decreased range of motion and tenderness. He also related that during physical therapy she showed difficulty with lifting and overhead activities which supported her diagnoses. Dr. Prodoehl opined that appellant's work injury caused inflammation in the shoulder which resulted in impingement. As such, he further opined that her work injury caused left shoulder rotator cuff tendinitis and impingement syndrome. In addition, Dr. Prodoehl opined that appellant's fall aggravated and exacerbated her preexisting left knee arthritis and left shoulder AC joint arthritis, and caused further trauma. He concluded that she had continuing residuals and disability since she started her part-time, light-duty position in June 2017 through the date of his report.

Dr. Prodoehl disagreed with Dr. McGovern's opinion that appellant had no work limitations, noting that she was unable to lift overhead, from the waist to shoulder, and from the floor to knuckle. Appellant also had difficulty standing, climbing stairs, and walking more than 45 minutes unaided. As such, Dr. Prodoehl concluded that she was unable to perform the duties of her rural mail carrier position and was only able to perform her light-duty position.

⁶ On June 23, 2017 the employing establishment offered appellant a modified position which she accepted on June 27, 2017.

Dr. Prodoehl, in a December 4, 2018 report, provided impressions that appellant was status post left knee arthroscopy, left shoulder impingement, left rotator cuff tendinitis, left AC degenerative joint disease, left hip strain, left hip degenerative joint disease, and degenerative arthritis of the left knee. He diagnosed sprain and strain of other specified sites of hip and thigh, anterior tibial tendon tear, traumatic, and sprain of the left patella.

In a November 16, 2018 report, Dr. Doyle reiterated appellant's history of injury and noted her current complaints. He examined her and reported the same findings on mental examination as set forth prior reports. Dr. Doyle also restated his prior diagnoses of major depressive disorder, moderate, and somatic symptom disorder with pain, and sprain of the left shoulder and upper arm AC, sprain of the left hip and thigh, and sprain of the left knee and leg. He further restated his prior opinion that the accepted May 18, 2015 employment injuries caused appellant's current conditions and that her claim should be expanded to include these conditions. Dr. Doyle indicated that physical injuries resulting in chronic or disabling medical conditions increase the risk for major depressive episodes due to the adverse functional impact of ongoing pain and physical impairments. He noted that appellant clearly experienced a significant physical injury on May 18, 2015 when she fell at work and exhibited symptoms of major depressive disorder, including decreased attention/concentration, generalized nervousness, emotional lability with crying spells, depressed mood, persistent sleep disturbance, daytime fatigue, loss of interest, feelings of worthlessness, and social and emotional withdrawal aggravated by chronic pain and physical impairments at the time of his initial evaluation. Dr. Doyle opined, therefore, that the nonresolution of her pain and physical limitations due to the accepted work injury caused her major depressive disorder. He indicated that chronic pain syndrome developed when there was abnormal function of the nervous system due to injury or disease. Dr. Doyle indicated that chronic pain can result in spontaneous pain, hypersensitivity to pain, and significant disability, and can become a self-perpetuating condition. He related that appellant's significant physical injury on May 18, 2015 resulted in her chronic shoulder, hip, and left knee pain, and associated functional deficits, despite surgery and ongoing pain management at the time of his initial evaluation. Dr. Doyle, therefore, opined that her ongoing work-related pain caused somatic symptom disorder with pain (chronic pain syndrome). He restated his prior opinion that appellant was totally temporarily disabled from performing her rural carrier duties or any other gainful employment at the time of his July 25, 2016 evaluation.

Dr. Doyle maintained that her residual physical and psychiatric impairments from her work-related major depressive disorder prevented her from performing at a consistent pace without an unreasonable number of rests, maintaining attention and concentration for extended periods, comprehending and following complex instructions, performing repetitive tasks on an ongoing basis, coping with work stressors, relating appropriately to coworkers and supervisors, and completing a normal work week without interruptions from psychologically based symptoms, including depressed mood, nervousness, fatigue, loss of interest, feelings of worthlessness, and social and emotional withdrawal. In addition, appellant was at increased risk for further psychological decompensation and worsening of depressive symptoms.

OWCP subsequently received an additional prescription note dated December 6, 2018 and reports dated January 18 and February 5, 2019 from Dr. Prodoehl, who continued to diagnose left knee degenerative arthritis, sprain and strain of other specified sites of hip and thigh, anterior tibial tendon tear, traumatic, and sprain of the left patella.

By decision dated March 11, 2019, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

Once OWCP properly terminates a claimant's compensation benefits, he or she has the burden of proof to establish continuing disability after that date related to the accepted injury.⁷ 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.⁸ A claimant must establish by the weight of the reliable, probative, and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish continuing disability after August 21, 2016 causally related to her accepted May 18, 2015 employment injury.

On prior appeal the Board found that OWCP had met its burden of proof to terminate appellant's wage-loss compensation benefits based on the impartial medical opinion of Dr. McGovern, who found that she had no further disability of the accepted employment injuries.

As the Board had previously considered the issue of continuing disability after August 21, 2016, absent further merit review of this issue by OWCP pursuant to section 8128 of FECA, this issue is *res judicata*.¹⁰

Following the Board's December 15, 2017 decision, appellant requested reconsideration and submitted additional medical reports from Dr. Prodoehl and Dr. Doyle. In a letter dated November 28, 2018, reports dated January 18 and February 5, 2019, and a prescription note dated December 6, 2018, Dr. Prodoehl found that she had work-related left knee sprain, left hip and thigh sprain/strain, left AC joint strain, left shoulder impingement, left shoulder AC degenerative joint disease, left shoulder rotator cuff tendinitis, and left knee traumatic arthritis. In the November 16, 2018 report, he opined that, in addition to appellant's accepted conditions, the May 18, 2015 employment injury caused left shoulder impingement syndrome, AC degenerative joint disease and rotator cuff tendinitis, and left knee traumatic arthritis. Dr. Prodoehl opined that the May 18, 2015 employment-related left shoulder injury could have caused her impingement syndrome and rotator cuff tendinitis. The Board finds that he failed to offer adequate medical rationale explaining how the accepted conditions resulted in continuing disability after the termination on August 21, 2016. Medical reports without adequate rationale are of diminished probative value and do not meet an employee's burden of proof.¹¹ Further, Dr. Prodoehl, was on one side of the

⁷ *O.W.*, Docket No. 19-0316 (issued June 25, 2019); *C.L.*, Docket No. 18-1379 (issued February 5, 2019); *V.G.*, Docket No. 17-0583 (issued July 23, 2018).

⁸ *C.L.*, *id.*

⁹ *S.F.*, Docket No. 17-1427 (issued May 16, 2018).

¹⁰ *Supra* note 6.

¹¹ *See E.C.*, Docket No. 17-1645 (issued June 11, 2018).

conflict resolved by Dr. McGovern. The Board has long held that reports from a physician who was on one side of a medical conflict that a medical impartial specialist resolved, are generally insufficient to overcome the special weight accorded to the report of the IME, or to create a new conflict.¹² As such, Dr. Prodoehl's additional reports are of insufficient weight to overcome the special weight accorded to Dr. McGovern's opinion or to create a new medical conflict. For these reasons, the Board finds that his reports are insufficient to satisfy appellant's burden of proof.

Dr. Doyle, in a November 16, 2018 report, found that appellant had moderate major depressive disorder and somatic symptom disorder with pain, sprain of the left shoulder and upper arm AC, sprain of the left hip and thigh, and sprain of the left knee and leg. He opined that her conditions were caused by the accepted May 18, 2015 employment injuries and that her claim should be expanded to include these conditions. Dr. Doyle further opined that appellant was temporarily totally disabled from work due to her employment-related physical and emotional conditions. He noted that physical injuries resulting in chronic or disabling medical conditions increased the risk for major depressive episodes due to the adverse functional impact of ongoing pain and physical impairments. Dr. Doyle related that appellant clearly experienced a significant physical injury on May 18, 2015 when she fell at work and exhibited symptoms of major depressive disorder, including decreased attention/concentration, generalized nervousness, emotional lability with crying spells, depressed mood, persistent sleep disturbance, daytime fatigue, loss of interest, feelings of worthlessness, and social and emotional withdrawal aggravated by chronic pain and physical impairments at the time of his initial evaluation. He advised that she was at increased risk for further psychological decompensation and worsening of depressive symptoms. Although Dr. Doyle provided an opinion on causal relationship, he did not offer adequate medical rationale explaining how the diagnosed physical and emotional conditions and resultant disability were caused or aggravated by the accepted May 18, 2015 injuries.¹³ Moreover, the Board notes that to the extent that he is asserting that a return to work might cause further injury, the Board has held that fear of future injury is not compensable.¹⁴ For these reasons, the Board finds that Dr. Doyle's report is also insufficient to meet appellant's burden of proof.

On appeal counsel contends that the reports from Dr. Prodoehl and Dr. Doyle are sufficient to establish that the acceptance of appellant's claim should be expanded to include additional physical and emotional conditions and that she continues to suffer from residuals and disability causally related to her accepted May 18, 2015 employment injury. While OWCP referenced the issue of expansion of the acceptance of her claim to include additional medical conditions, it has not issued a decision on that issue. Therefore, the issue of claim expansion is not presently before the Board. Also, as explained above, the medical evidence of record is insufficient to establish continuing disability after August 21, 2016 causally related to her accepted May 18, 2015 employment injury.

¹² *I.J.*, 59 ECAB 408 (2008).

¹³ *Supra* note 11.

¹⁴ *P.S.*, Docket No. 18-1361 (issued May 20, 2019).

Appellant may submit 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 appellant has not met her burden of proof to establish continuing disability after August 21, 2016 causally related to her accepted May 18, 2015 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 11, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board