

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

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J.W., Appellant )  
and ) Docket No. 19-0181  
U.S. POSTAL SERVICE, HUNTINGTOWN )  
POST OFFICE, Huntingtown, MD, Employer ) Issued: July 18, 2019  
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)

*Appearances:*

*Appellant, pro se*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On November 5, 2018 appellant filed a timely appeal from a September 26, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the October 26, 2018 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 OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 26, 2018, as she no longer had residuals or disability causally related to the accepted December 2, 2016 employment injury.

## **FACTUAL HISTORY**

On December 2, 2016 appellant, then a 32-year-old rural carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her right shoulder, ribs, and back when her postal vehicle was struck from the rear in a motor vehicle accident while in the performance of duty. She stopped work on December 2, 2016. On March 2, 2017 OWCP accepted appellant's claim for right rotator cuff strain, cervical spine sprain, and contusion of the right front wall of the thorax.

On March 10, 2017 appellant filed a claim for wage-loss compensation (Form CA-7) beginning January 17, 2017. On April 25, 2017 OWCP authorized wage-loss compensation. Appellant returned to full-time modified work three days per week on August 14, 2017.

On June 14, 2017 Dr. Nirmaladevi Jayanthan, a Board-certified internist, diagnosed right rotator cuff injury and cervical spine sprain. She repeated her diagnosis of cervical sprain on October 19, 2017.

On October 19, 2017 OWCP referred appellant, a statement of accepted facts (SOAF), and a list of questions to Dr. Willie Thompson, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a note dated November 9, 2017, Dr. Jayanthan diagnosed cervical and lumbar sprains.

On November 16, 2017 in his second opinion report, Dr. Thompson noted appellant's history of a work-related motor vehicle accident on December 2, 2016. He found mild tenderness of the lower ribs of the right chest wall. Dr. Thompson also reported no curvature of the thoracic spine. He diagnosed contusion to the right thorax and chest wall and thoracic sprain. Dr. Thompson found that appellant did not require any additional medical treatment and that she could return to full duty without restrictions.

On January 11, 2018 Dr. Jayanthan opined that appellant could work full time, 40 hours a week, with restrictions. In her January 11, 2018 note, she diagnosed sprains of the cervical and thoracic areas of the spine. On February 15, 2018 Dr. Jayanthan released appellant to return to full-duty work with no restrictions. She examined appellant on March 8, 2018 and noted that appellant worked 12 hours and diagnosed cervical and lumbar sprains. Dr. Jayanthan recommended that appellant stop work and obtain a different position. In a March 30, 2018 duty status report, (Form CA-17) she found that appellant was totally disabled due to her cervical strain.

On February 5, 2018 appellant filed claims for wage-loss compensation (Form CA-7) beginning on January 8, 2018. OWCP authorized compensation from January 9 through February 8, 2018.

In a March 30, 2018 note, Dr. Jayanthan opined that appellant could perform light-duty work. She diagnosed cervical and lumbar sprains as well as a right rotator cuff injury. On April 20, 2018 Dr. Jayanthan again diagnosed cervical and lumbar sprains.

On May 2, 2018 OWCP referred appellant, a SOAF, and a list of questions, for an impartial medical examination (IME) with Dr. Mohammed Zamani, a Board-certified orthopedic surgeon, to resolve the conflict of medical opinion evidence between Drs. Jayanthan and Thompson regarding appellant's medical residuals and disability from work.

On May 11, 2018 Dr. Jayanthan released appellant to perform light-duty work. She diagnosed cervical sprain, rotator cuff strain, and contusion of the right front wall of the thorax.

In a narrative report dated May 30, 2018, Dr. Jayanthan noted that appellant's initial diagnoses following her December 2, 2016 employment injury were right rotator cuff syndrome, strain of the cervical spine, and contusion of the right side of the thorax. She noted that she released appellant to full-time work on January 11, 2018, but that the employing establishment did not provide work within appellant's restrictions until February 12, 2018. On March 8, 2018 appellant reported increased pain, muscle spasms, and tightness. She found that she was unable to meet her regular workload. Dr. Jayanthan also referred appellant for a psychotherapist due to work-related stress. She released appellant to light duty on May 11, 2018 with no pushing, pulling, or lifting over 10 pounds. On May 31, 2018 Dr. Jayanthan indicated that appellant could perform light duty to avoid pain precipitated by repetitive work. She also noted that appellant should continue physical therapy.

In a report dated May 29, 2018, Dr. Zamani, the IME noted appellant's history of injury on December 2, 2016 and reviewed the SOAF. He performed a physical examination and found full range of motion (ROM) in the neck, with no tenderness on palpation on the dorsum of the neck and trapezius. Dr. Zamani reported that appellant was hesitant to move her right shoulder, but with distraction was capable of moving her shoulder freely. He found no sign of rotator cuff tear or instability. Dr. Zamani found no spasm in the spine. He noted rather serious symptom magnification. Dr. Zamani determined that appellant had no objective physical findings, that she had fully recovered from the December 2, 2016 employment injury, and that she could return to full-duty work with no restrictions. He noted that she had a preexisting psychological condition which was unrelated to the employment injury. Dr. Zamani provided restrictions indicating that appellant could reach, reach above the shoulder, and twist for four hours and could not climb.

On June 22, 2018 Dr. Jayanthan indicated that appellant could perform light-duty work avoiding repetitive activities.

On July 3, 2018 OWCP requested a supplemental report from Dr. Zamani specifically addressing appellant's work restrictions.

On July 17 and August 6, 2018 Dr. Jayanthan examined appellant due to discomfort in her right shoulder and upper back. She reported that appellant was not working. Dr. Jayanthan diagnosed cervical and lumbar sprains as well as right rotator cuff injury.

On June 15, 2018 Dr. Zamani completed a supplemental report. He concluded that appellant required no further treatment and was capable of performing unrestricted full-duty work.

On August 20, 2018 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. Zamani's reports. It afforded her 30 days to respond in writing, if she disagreed with the proposed termination.

In a letter dated September 21, 2018, appellant disagreed with the proposed termination. She alleged that Dr. Zamani's reports were inconsistent, that he improperly addressed her medications, and that he improperly disagreed with Dr. Jayanthan's treatments.

By decision dated September 26, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits effective that date. It found that Dr. Zamani's May 29 and June 15, 2018 reports were entitled to the special weight of the medical evidence and established that she had no continuing employment-related disability or medical residuals due to her accepted December 2, 2016 employment injury.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.<sup>3</sup> 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 the employment.<sup>4</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>6</sup> 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.<sup>7</sup>

Section 8123(a) 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 who shall make an examination.<sup>8</sup> The implementing regulations provides that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a

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<sup>3</sup> *B.E.*, Docket No. 18-0849 (issued January 7, 2019); *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *C.S.*, Docket No. 18-0952 (issued October 23, 2018); *see S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005).

<sup>4</sup> *B.E.*, *id.*; *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>5</sup> *B.E.*, *id.*; *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>6</sup> *B.E.*, *id.*; *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>7</sup> *B.E.*, *id.*; *Kathryn E. Demarsh*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003).

<sup>8</sup> 5 U.S.C. § 8123(a).

physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>9</sup>

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME 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.<sup>10</sup>

## ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective September 26, 2018, as she no longer had residuals or disability causally related to the accepted employment injury.

OWCP properly determined that a conflict in medical opinion arose between Dr. Jayanthan, appellant's attending physician, and Dr. Thompson, an OWCP referral physician, regarding appellant's current condition and the extent of her disability due to her accepted employment injury. It referred her to Dr. Zamani, a Board-certified orthopedic surgeon, for an IME.

Where there exist opposing medical 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.<sup>11</sup> The Board finds that the opinion of Dr. Zamani is well rationalized and based on a proper factual and medical history. Dr. Zamani accurately summarized the relevant medical evidence, provided detailed findings on examination, and reached conclusions about appellant's conditions which comported with his findings. In a report dated May 29, 2018, he noted his review of the medical evidence of record and findings on examination. Dr. Zamani opined that appellant had full medical recovery and could return to her employment without restrictions. In his June 15, 2018 supplemental report, he reiterated that she required no further treatment and was capable of performing unrestricted full-duty work. As his reports are detailed, well rationalized, and based on a proper factual background, Dr. Zamani's opinion is entitled to the special weight accorded an IME.<sup>12</sup>

In a letter dated September 21, 2018, appellant disagreed with the proposed termination. She alleged that Dr. Zamani's reports were inconsistent, that he improperly addressed her medications, and that he improperly disagreed with Dr. Jayanthan's treatments. Appellant's own

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<sup>9</sup> 20 C.F.R. § 10.321.

<sup>10</sup> *B.E.*, *supra* note 3; *A.G.*, *supra* note 3; *C.S.*, *supra* note 3; *R.C.*, 58 ECAB 238 (2006); *David W. Pickett*, 54 ECAB 272 (2002); *Barry Neutuch*, 54 ECAB 313 (2003).

<sup>11</sup> *B.E.*, *id.*; *C.S.*, *id.*; *J.M.*, 58 ECAB 478 (2007).

<sup>12</sup> *B.E.*, *id.*; *J.M.*, *id.*; *Kathryn E. Demarsh*, *supra* note 6.

lay opinion is not relevant to the medical issue in this case, which can only be resolved through the submission of probative medical evidence from a physician.<sup>13</sup>

The remaining evidence submitted prior to OWCP's termination of appellant's wage-loss compensation and medical benefits is insufficient to overcome the special weight afforded to Dr. Zamani as the IME. The Board, therefore, finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits effective September 26, 2018.

### **CONCLUSION**

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective September 26, 2018, as she no longer had residuals or disability causally related to the accepted employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 18, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>13</sup> See G.C., Docket No. 18-0506 (issued August 15, 2018).