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

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| **P.S., Appellant** | ) | |
| **and** | ) | **Docket No. 18-1361** |
| | ) | **Issued: May 20, 2019** |
| **U.S. POSTAL SERVICE, POST OFFICE, Jamaica, NY, Employer** | ) | |

*Appearances:*
*Paul Kalker, Esq.,* 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 July 2, 2018 appellant, through counsel, filed a timely appeal from a June 14, 2018 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 June 15, 2018, as she had no residuals or disability causally related to her accepted March 20, 2017 employment injury.

## ***FACTUAL HISTORY***

On March 22, 2017 appellant, then a 49-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 20, 2017 she "fell into postcon and over parcel" while in the performance of duty. She alleged that she injured her right knee, wrist, shoulder, left toe, and right hip. Appellant stopped work on that same date. OWCP placed her on the periodic rolls and she received wage-loss compensation for total disability for the period commencing March 21, 2017.

On April 17, 2017 OWCP accepted the claim for right knee contusion and left shoulder contusion. On April 20, 2017 it amended the acceptance of the left shoulder contusion as it was actually a right shoulder diagnosed with a contusion. OWCP accepted appellant's claim for contusion of the right knee, shoulder, wrist, and elbow. It referred her for treatment with a rehabilitation nurse on April 21, 2017.

On June 15, 2017 it updated the accepted conditions in the claim to include the additional conditions of right knee other tear of medial meniscus and right shoulder superior labrum anterior and posterior (SLAP) tear.

Appellant received treatment from Dr. Dante Trovato, a Board-certified orthopedic surgeon. Dr. Trovato continued to treat her for her accepted conditions and opined that she was "100 percent disabled." He also recommended arthroscopic knee surgery, which appellant declined.

In an August 2, 2017 report, Dr. Trovato noted findings for the right shoulder, which included tenderness to palpation over the supraspinatus tendon and proximal biceps tendon. He found range of motion (ROM) of the shoulder to 130 degrees of forward elevation, abduction of 130 degrees, and internal rotation to lower lumbar level. Dr. Trovato found mild scapula thoracic dysarthrmia, a positive Hawkins test, and a positive Neer's impingement test. He also found mildly weak supraspinatus strength, external rotator strength and lift strength, and a positive O'Brien test.

For the right knee Dr. Trovato found that appellant ambulated with a normal gait, without any ambulatory aide. He noted that the knee had normal valgus alignment and that it was mildly swollen, with no effusion. Dr. Trovato found no erythema, no ecchymosis or warmth. He found tenderness to palpation over the medial and lateral patella facets. Dr. Trovato noted that appellant flexed to 110 degrees and had quadriceps strength of 4/5 and hamstrings strength of 4/5. He found tenderness to palpation at the medial joint line. Dr. Trovato diagnosed contusion of right shoulder, subsequent encounter, and contusion of right knee, subsequent encounter. He completed a progress note of even date and opined that appellant was 100 percent disabled and could not return to work. Dr. Trovato repeated this finding in his September 6 and 18, 2017 reports.

On August 11, 2017 OWCP referred appellant to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion examination on the nature and extent of her employment-related residuals and disability. Dr. Sultan was provided a copy of the medical record, a statement of accepted facts (SOAF), and a series of questions.

In a September 25, 2017 report, Dr. Sultan detailed appellant's factual and medical background, noted the medical records he reviewed, and provided physical examination findings.

Dr. Sultan examined the right shoulder and found no localized swelling, deformity, or discoloration. He indicated that he did not find any complaints on palpation over the long head of the biceps tendon or the acromioclavicular articulation. Dr. Sultan determined that there was no deltoid muscle atrophy when compared to the opposite side. He conducted ROM testing with goniometric measurement. Dr. Sultan's findings included that abduction and forward flexion was 160 degrees (normal was 170 to 180 degrees), internal rotation and external rotation was 45 degrees (normal was 40 to 50 degrees), adduction was 45 degrees (nomal was 45 to 60 degrees) and posterior extension was 40 degrees (normal was 40 to 45 degrees). He determined that appellant had a negative impingement test, a negative drop arm, and a negative Hawkin's test.

Dr. Sultan found no evidence of localized swelling, deformity, or discoloration of the right elbow. He determined that there were no complaints on palpation over the elbow, soft tissue, or bony structures. Dr. Sultan conducted ROM testing with goniometric measurement and determined that elbow extension was complete at 0 degrees (normal was 0 degrees), and flexion was to 150 degrees (normal was 145 to 155 degrees). He also advised that he detected no medial or lateral elbow instability with stress testing, and the elbow carrying the angle was normal. Dr. Sultan conducted sensory testing of the upper arm, elbow, and forearm and found that it was intact. He also found grip strength was strong and pinch mechanism was well preserved.

On examination of the right wrist Dr. Sultan found no evidence of localized swelling, deformity, or discoloration, and no complaints on palpation over the wrist soft tissue or bony structures. He found normal ROM on both sides of the wrist. Dr. Sultan determined that there was no intrinsic muscle atrophy involving the hand and no trophic changes involving the skin or nails. He found grip strength was strong and pinch mechanism was intact. Additionally, sensation of the hand was normal.

On examination of the right knee Dr. Sultan found no evidence of localized swelling, deformity, or discoloration. He noted that the right knee patella was mobile and that there was no knee joint effusion. Dr. Sultan advised that stress testing of the right knee revealed intact collateral and cruciate ligaments, the patellofemoral compression test was negative, and that there was no abnormal patellofemoral crepitus with ROM testing. He conducted full ROM testing of the right knee with goniometric measurement and found normal extension at 0 degrees and flexion to 120 degrees (normal at 145 degrees) Dr. Sultan explained that the limitation of flexion was secondary to her size. He determined that appellant had "equal motion findings on the left side." Dr. Sultan found no complaints on palpation over the medial or lateral joint line and determined that provocative testing revealed a negative Spring test and a negative McMurray test. He also noted that appellant ambulated without external support, and that she had a steady walking pattern without any visible signs of antalgia.

Dr. Sultan explained that appellant was diagnosed with soft tissue trauma to the right shoulder with residual low grade right shoulder adhesive capsulitis and soft tissue trauma to the right elbow, right wrist, and right knee, clinically resolved. He confirmed that she had low grade right shoulder motion restriction without impingement or instability. Dr. Sultan found that examination of the right elbow, right wrist, and right knee was "unremarkable." He also explained that he did not find any clinical signs of right knee meniscal tear or right shoulder SLAP tear.

With regard to appellant's ability to return to her full duties as a letter carrier, Dr. Sultan explained that the current right shoulder condition would preclude her from performing full unrestricted duty, as she could not carry more than 20 pounds at a time with her right arm and in regard to reaching overhead. He explained that she was capable of performing light work with restrictions on lifting or carrying up to 20 pounds at a time using both hands and restricting overhead activity. Dr. Sultan indicated that the restrictions were temporary and that appellant should undergo another two months of physical therapy before reaching maximum medical improvement (MMI).

On October 23, 2017 Dr. Trovato diagnosed a contusion to the right shoulder. He completed a progress report and a duty status report (Form CA-17) of even date. Dr. Trovato advised that appellant could not return to work because of shoulder pain and opined that she was 100 percent disabled.

In a letter dated November 7, 2017 to Dr. Sultan, OWCP requested a supplemental report addressing his opinion as to residuals of her accepted condition and whether additional conditions were causally related to her accepted employment injury.

In a November 13, 2017 addendum, Dr. Sultan noted that his examination of the right elbow, right wrist, and right knee, was normal. He explained that the right knee medial meniscus tear was not evident on his examination. Regarding appellant's right shoulder, Dr. Sultan explained that he noted low grade right shoulder motion restriction secondary to an underlying right shoulder partial adhesive capsulitis. However, he noted that the SLAP tear was not clinically evident. Dr. Sultan concluded that adhesive capsulitis should be added to the accepted conditions because it was a sequela of the accepted injury. He also noted that appellant needed additional physical therapy and home exercises to facilitate recovery from the work-related injury of March 20, 2017.

On November 24, 2017 OWCP updated appellant's accepted conditions. It found that: her contusion of the right knee, right shoulder, right wrist, and right elbow; right knee medial meniscus tear; and, right shoulder SLAP tear had all resolved. OWCP updated acceptance of her claim for the condition right shoulder adhesive capsulitis.

In a letter dated November 30, 2017, OWCP requested that Dr. Sultan provide updated work restrictions, as the two-month period for physical therapy he had recommended had passed.

In November 20 and December 18, 2017 and January 22 and February 19, 2018 progress reports, Dr. Trovato indicated that appellant could not work due to shoulder pain as she remained 100 percent disability. He noted included the diagnosis of adhesive capsulitis.

OWCP again referred appellant, along with a copy of her medical records, a SOAF, and a series of questions to Dr. Sultan who performed an updated physical examination. In a report dated March 5, 2018, Dr. Sultan noted physical examination findings for appellant's right knee, shoulder, elbow, and wrist which were noted to be consistent with left-sided findings. He noted measurements of ROM and responded to questions from OWCP.

Following his physical examination, Dr. Sultan opined that there were no residual functional orthopedic impairments related to the March 20, 2017 incident at work. He explained that the objective orthopedic examination of the right knee, right shoulder, right elbow, and right wrist, was devoid of any residual functional impairment. Dr. Sultan determined that appellant did not have residual post-traumatic orthopedic impairment that would preclude her from performing full, unrestricted work activity as a letter carrier. He advised that no further treatment was necessary, completed a work capacity evaluation, and reported that appellant had reached MMI and could return to work full duty.

In a letter dated March 19, 2018, OWCP provided Dr. Trovato with a copy of Dr. Sultan's March 5, 2018 report and requested that he provide an opinion with regard Dr. Sultan's findings that his own opinion as to whether appellant's condition had resolved such that she was able to return to unrestricted work. It afforded Dr. Trovato 30 days to provide a response.

In a March 21, 2018 report, Dr. Trovato noted his own examination findings and noted that appellant's adhesive capsulitis of the right shoulder was aggravated by overhead activities, carrying heavy objects, and pulling and pushing. He completed a progress report and indicated that it remained his opinion that she could not return to work.

In a May 7, 2018 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits because she ceased to have residuals of her work injuries. It informed her that the weight of the medical opinion evidence rested with the March 5, 2018 report of Dr. Sultan, OWCP's referral physician, who had determined that her injury-related disability and residuals had ceased. OWCP afforded appellant 30 days to submit evidence and argument challenging the proposed termination action.

In a letter dated June 2, 2018, counsel argued that Dr. Sultan's March 5, 2018 report must be disregarded as it was based upon an erroneous review of the medical evidence. He also provided additional medical evidence from Dr. Trovato in support of appellant's claim.

OWCP received April 5 and June 7, 2018 reports from Dr. Trovato in which he indicated that appellant continued to have complaints of pain in her right shoulder and right knee and diagnosed a medial meniscus tear of the right knee and a complete rotator cuff tear and a labrum tear of the right shoulder, noting neither condition would heal due to poor blood supply. Dr. Trovato explained that when it was cold, damp, or raining outside her shoulder and knee pain worsened and she had to take medications on and off due to her pain. He explained that appellant was unable to fully raise her right arm and that lifting, carrying, and attempted overhead activities were associated with pain and clicking in her shoulder. Dr. Trovato advised that she continued to complain of pain and swelling in her right knee and noted that she had clicking on movement of her knee which caused her pain and caused her knee to "feel weak and buckle." He explained that appellant's employment duties included carrying mail, lifting, and performing overhead activities.

Dr. Trovato also noted that she needed to stand, walk for extended periods of time, carry heavy objects, kneel, squat at times, and go up and down steps and therefore her employment duties could further aggravate her diagnosed conditions. He indicated that appellant had not reached MMI and that she required arthroscopic surgery for her right knee and arthroscopic surgery for her shoulder to repair her rotator cuff and repair or debride the labrum. Dr. Trovato opined that she was unable to perform her duties as a letter carrier.

By decision dated June 14, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits effective June 15, 2018, because she ceased to have residuals causally related to her accepted March 20, 2017 employment injury. It found that the weight of the medical opinion evidence rested with the March 5, 2018 report of Dr. Sultan, OWCP's referral physician. OWCP also noted that the reports of Dr. Trovato were not well rationalized, as he failed to support his opinion with documented objective findings as to how appellant remained disabled due to her work injury of March 20, 2017. It also explained that pain is a subjective complaint and cannot constitute continued disability on its own.

## ***LEGAL PRECEDENT***

Once OWCP accepts a claim and pays compensation, it bears the burden of proof to justify modification or termination of benefits.[3] It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[4] OWCP's 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 to compensation for disability.[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***

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits effective June 15, 2018, as she had no residuals or disability causally related to her accepted March 20, 2017 employment injury.

[3] *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

[4] *See R.P., id.; Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

[5] *See R.P., supra* note 3; *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[6] *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *see R.P., supra* note 3; *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[7] *See R.P., supra* note 3; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

In a March 5, 2018 second opinion medical report, Dr. Sultan noted appellant's history of injury and treatment and provided examination findings.

Dr. Sultan conducted tests of appellant's right knee and reported negative findings. He conducted ROM testing of the right knee with goniometric measurement and determined that her ROM was normal. Dr. Sultan explained that the only limitation was on appellant's flexion, but that it was "secondary to her size." He found equal motion findings on the left side.

Dr. Sultan examined appellant's right shoulder and determined that it was normal. He also found that she had equal ROM findings on the left side. Dr. Sultan advised that appellant's shoulder tests were all negative.

Dr. Sultan also reported that appellant had normal ROM on her right elbow. He found no medial or lateral elbow instability with stress testing. Dr. Sultan conducted sensory testing and found the elbow intact. He also found a negative impingement test, negative drop arm test, and a negative Hawkin's test.

Dr. Sultan's examination of appellant's right wrist found no objective evidence of localized swelling, deformity, or discoloration and no complaints on palpation over her wrist soft tissue or bony structures. He found normal ROM on both sides of the wrist. Dr. Sultan determined that there was no intrinsic muscle atrophy involving the hand no trophic changes involving the skin or nails. He found grip strength was strong and pinch mechanism was intact.

Dr. Sultan opined that there was no residual functional orthopedic impairment related to the March 20, 2017 employment injury. He explained that the objective orthopedic examinations of the right knee, right shoulder, right elbow, and right wrist, were devoid of any residual functional impairment. Dr. Sultan explained that appellant did not have any residual post-traumatic orthopedic impairment that would preclude her from performing full, unrestricted work activity as a letter carrier.

The Board has held that the factors that comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of 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 the report of Dr. Sultan 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. Dr. Sultan also explained with rationale how her employment-related conditions had resolved. The Board finds that he examined appellant, provided normal physical examination findings, and explained how he arrived at his conclusion that she no longer suffered residuals from her accepted condition.

In support of her claim for continuing disability, appellant submitted reports from her treating physician, Dr. Trovato, who advised that she was unable to work. In an April 5, 2018 report, Dr. Trovato indicated that she continued to have complaints of pain in her right shoulder and right knee, required medication due to her pain, and was unable to fully raise her right arm.

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

However, pain and/or discomfort is only considered a symptom, not a medical diagnosis.[9] The Board has held that a report is of limited probative value if it does not contain medical rationale explaining how a given medical condition or disability was related to an employment injury.[10] Without further explanation or rationale as to why appellant had complaints of pain and was unable to raise her right arm, this report is insufficient to establish that she had continued residuals from her accepted condition.

In a report dated June 7, 2018, Dr. Trovato opined that appellant was not at MMI, that she could not perform her duties as a letter carrier, and that she required arthroscopic surgery for her right knee. He further opined that her work duties would exacerbate her condition. Dr. Trovato noted that, for the right shoulder, appellant would have pain on an on and off basis and her work would exacerbate her symptoms. 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.[11]

The Board also notes that Dr. Trovato indicated that appellant was in need of arthroscopic surgery for her shoulder to repair her rotator cuff and repair or debride the labrum. However, Dr. Sultan indicated that the examination of the right shoulder was normal. Moreover, the conditions of rotator cuff tear and labrum tear are not currently accepted claims related to her accepted employment injury. Where an employee claims that a condition not accepted by OWCP was due to an employment injury, appellant bears the burden of proof to establish that the condition is causally related to the employment injury.[12] Therefore, Dr. Trovato's opinion is of diminished probative value as to continuing disability.

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.[13] The Board finds that Dr. Trovato's opinions are insufficient to establish that appellant continues to have residuals of her accepted work injury.

[9] Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury,* Chapter 2.803.4a(6) (August 2012).

[10] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

[11] *I.J.*, 59 ECAB 408 (2008).

[12] *See L.S.*, Docket No. 18-1494 (issued April 12, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[13] *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).

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 June 15, 2018.

On appeal, counsel argued that termination was improper. For the reasons set forth above, the Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

## ***CONCLUSION***

The Board finds that OWCP met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective June 15, 2018, as she had no residuals or disability causally related to her accepted March 20, 2017 employment injury.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the June 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2019
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