

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

R.R., Appellant)	
)	
and)	Docket No. 19-0173
)	Issued: May 2, 2019
U.S. POSTAL SERVICE, POST OFFICE, Macedonia, OH, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 October 29, 2018 appellant, through counsel, filed a timely appeal from an August 15, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the

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 The Board notes that, following the August 15, 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.*

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issue are: (1) whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective December 6, 2017; and (2) whether appellant has met his burden of proof to establish continuing employment-related disability or residuals after December 6, 2017.

FACTUAL HISTORY

On December 2, 2014 appellant, then a 58-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 21, 2014 he slipped on ice and bruised his left knee while in the performance of duty. OWCP accepted the claim for a left knee contusion. Subsequently, it expanded acceptance of the claim to include a medial meniscus tear of the left knee and an aggravation of left knee osteoarthritis. OWCP assigned OWCP File No. xxxxxx317. Appellant stopped work on November 21, 2014 and returned to part-time limited-duty employment on December 13, 2014. He experienced additional periods of intermittent total and partial disability until he resumed full-time modified employment on July 14, 2015.

OWCP subsequently accepted that appellant sustained left shoulder strain due to an April 4, 2016 employment lifting injury while loading his truck. It assigned OWCP File No. xxxxxx054. Appellant stopped work on April 4, 2016 and did not return. Under OWCP File No. xxxxxx054, OWCP paid him wage-loss compensation on the supplemental rolls effective May 20, 2016 and on the periodic rolls effective January 8, 2017. Appellant returned to part-time employment for two hours per day on April 2, 2017. OWCP paid him wage-loss compensation for partial disability beginning that date.

On March 17, 2017 OWCP referred appellant to Dr. Gerard Papp, an osteopath and Board-certified orthopedic surgeon, for a second opinion examination.

OWCP on April 6, 2017 administratively combined OWCP File No. xxxxxx317 and OWCP File No. xxxxxx054, with OWCP File No. xxxxxx317 designated as the master file.

In a report dated April 18, 2017, Dr. Papp found that appellant had satisfactory shoulder motion with some limitation in internal and external rotation, good strength of the rotator cuff, and 4+/5 biceps strength on the left side. He found no objective evidence of left shoulder strain. Dr. Papp indicated that appellant had degenerative rotator cuff tears and glenohumeral arthritis that had primarily preexisted the injury and resulted in degenerative changes.

On May 10, 2017 OWCP again referred appellant to Dr. Papp, noting that it had doubled the files for his knee and shoulder claims subsequent to the initial referral.

³ 5 U.S.C. § 8101 *et seq.*

In a report dated August 18, 2017, Dr. Papp discussed appellant's history of employment injuries on November 21, 2014 and April 4, 2016 and reviewed the evidence of record, including the results of diagnostic testing. On examination, he found some patellofemoral and lateral left knee crepitation. Dr. Papp opined that, as found in his April 18, 2017 report, appellant's left shoulder strain had resolved. He diagnosed primary osteoarthritis of the left knee and degenerative meniscal tears with "no substantial aggravation of preexisting arthritis of the left knee." Dr. Papp opined that both appellant's left shoulder and left knee injuries had resolved. He related, "In regarding to [appellant's] work restrictions now, two hours per day, in my opinion these are more for [appellant's] primary osteoarthritis of his left knee as well as the degeneration of the left shoulder. From the standpoint of only the allowed conditions, he could return to his regular[-]duty position as a letter carrier." Dr. Papp opined that appellant's obesity was the primary contributor to his left knee osteoarthritis. In an August 18, 2017 work capacity evaluation (OWCP-5c), he found that appellant could perform his usual employment without restrictions.

In a letter dated September 13, 2017, OWCP requested that Dr. Kim S. Gladden, an attending Board-certified physiatrist, review the report of Dr. Papp and address whether she agreed with his findings regarding appellant's left knee condition. By separate letter of even date, it requested that Dr. James Rosneck, an attending Board-certified orthopedic surgeon, review Dr. Papp's report and address whether appellant's left shoulder strain had resolved.

In a report dated September 27, 2017, Dr. Rosneck related that he had treated appellant after an April 4, 2016 injury to his left shoulder. He found that appellant had experienced pain due to a rotator cuff tear that had "flared up on the date mentioned above." Dr. Rosneck related, "At this point the symptoms that remain are related to the preexisting condition. This is stated to [a] reasonable degree of medical certainty."

On October 10, 2017 Dr. Gladden related that she had initially evaluated appellant on May 23 and June 20, 2017. She concurred with Dr. Papp's opinion that x-rays obtained shortly after the November 21, 2014 employment injury revealed primary osteoarthritis and that the tearing of the meniscus may have resulted from degeneration. Dr. Gladden related:

"I suspect that at the time of the injury [that] there was aggravation of the existing osteoarthritis although I did not evaluate [appellant] immediately after this injury. The discomfort [appellant] is currently having with his left knee is a result of his chronic osteoarthritis, exacerbated by high BMI [body mass index] and is likely not a continuing discomfort related to the specific injury on November 21, 2014. This is stated to [a] reasonable degree of medical certainty."

Dr. Gladden advised that she provided no restrictions based on appellant's osteoarthritis as it varied depending on individual pain tolerance.

On November 2, 2017 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits as the evidence of record established that he no longer had employment-related residuals or disability due to his accepted left knee contusion, left medial meniscus tear, aggravation of left knee osteoarthritis, and left shoulder strain. It afforded him 30 day to submit additional evidence or argument, in writing, if he disagreed with the proposed termination.

OWCP subsequently received an October 17, 2017 report from Dr. Gladden. Dr. Gladden discussed appellant's history of left knee pain after he had slipped on ice at work on November 21, 2014. She diagnosed left knee unspecified osteoarthritis. Dr. Gladden indicated that she would advise OWCP regarding her treatment of appellant and of the findings of a functional capacity evaluation (FCE) performed in April or May 2017.

By decision dated December 6, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits effective that date. It found that the opinion of Dr. Papp, supported by the opinions of Dr. Rosneck and Dr. Gladden, established that appellant had no further residuals or disability due to his accepted employment injuries.

On December 11, 2017 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Subsequently, appellant submitted a July 6, 2017 emergency department report. Dr. Emily A. Goldman-Huertas, Board-certified in emergency medicine, diagnosed a muscle strain of the right thigh fascia and tendons. She obtained a history of appellant having tripped and fallen on his right leg at work.

On February 12, 2018 Dr. Rosneck advised that appellant had reached maximum medical improvement.

In a report dated May 2, 2018, Dr. Sami E. Moufawad, a Board-certified physiatrist, provided an impairment evaluation. He diagnosed a left shoulder strain, and a left shoulder rotator cuff tear, supraspinatus tear, subscapularis tear, and retraction tear of the long head of the biceps with retraction. Dr. Moufawad opined that all of the diagnoses were causally related to appellant's April 4, 2016 employment injury.

At the telephonic hearing, held on June 11, 2018, counsel noted that OWCP had accepted an aggravation of left knee arthritis. He asserted that arthritis did not heal.

By decision dated August 15, 2018, OWCP's hearing representative affirmed the December 6, 2017 decision. She found that the opinion of Dr. Papp constituted the weight of the evidence and established that appellant had no further disability or residuals of his accepted employment injuries.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.⁴ 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

⁴ *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

the employment.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits effective December 6, 2017.

On April 18, 2017 Dr. Papp, an OWCP second opinion physician, diagnosed degenerative rotator cuff tears, impingement syndrome, and glenohumeral arthritis of the left shoulder unrelated to the November 21, 2014 employment injury. He opined that appellant's left shoulder strain had resolved. In an August 18, 2017 report, Dr. Papp reviewed appellant's history of November 21, 2014 and April 4, 2016 employment injuries. He again determined that appellant had no residuals of his left shoulder strain. On examination, Dr. Papp found some crepitation of the patellofemoral and lateral left knee. He diagnosed left knee primary osteoarthritis and degenerative meniscal tears. Dr. Papp determined that appellant's left knee injury had resolved and that, considering only the accepted conditions, he could resume his usual employment. He provided a thorough review of the factual and medical background and accurately summarized the relevant medical evidence. Moreover, Dr. Papp provided detailed findings on examination and reached conclusions regarding appellant's condition which comported with his findings.⁹ Consequently, his opinion is entitled to the weight of the evidence and establishes that appellant had no further disability or need for medical treatment due to either his November 21, 2014 or April 4, 2016 employment injuries effective December 6, 2017.¹⁰

Additionally, Dr. Papp's opinion is reinforced by the reports of Dr. Gladden and Dr. Rosneck, appellant's attending physicians. On September 27, 2017 Dr. Rosneck opined that appellant's current left shoulder symptoms resulted from a preexisting condition rather than the April 4, 2016 employment injury. In a report dated October 10, 2017, Dr. Gladden indicated that appellant had sustained an aggravation of preexisting osteoarthritis due to his employment injury. She concurred with Dr. Papp's finding that appellant's current left knee pain was unrelated to the

⁵ *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁶ *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

⁷ *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

⁸ *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

⁹ *O.S.*, Docket No. 18-1549 (issued February 7, 2019).

¹⁰ *O.W.*, Docket No. 17-1881 (issued May 1, 2018).

November 21, 2014 employment injury, but instead due to chronic osteoarthritis aggravated by obesity.

The remaining evidence submitted prior to OWCP's termination of appellant's compensation is insufficient to establish that he had any further disability or residuals of his accepted employment-related conditions. In a report dated October 17, 2017, Dr. Gladden diagnosed osteoarthritis of the left knee and noted that he had a history of left knee pain following a November 21, 2014 slip on ice at work. She indicated that she would update OWCP on the findings of an FCE. Dr. Gladden, however, failed to address the relevant issue of whether appellant was disabled from employment or required further medical treatment due to his accepted employment injuries, and thus her opinion is of little probative value.¹¹

The Board finds that the weight of the evidence, as represented by the second opinion specialist, Dr. Papp, establishes that appellant had no further employment-related disability or need for medical treatment effective December 6, 2017, the date OWCP terminated his wage-loss compensation and medical benefits.¹²

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates compensation benefits, the burden of proof shifts to the claimant to establish that he has continuing disability causally related to the accepted employment injury.¹³ To establish causal relationship between the disability claimed and the employment injury, appellant must submit rationalized medical evidence or opinion based on a complete medical and factual background supporting causal relationship.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish continuing employment-related disability or residuals after December 6, 2017.

Following the termination of his compensation, appellant submitted a June 6, 2017 report from Dr. Goldman-Huertas, who treated him for right leg pain after a fall at work. He also submitted a February 12, 2018 report from Dr. Rosneck finding that he was at maximum medical improvement. As this evidence failed to address the relevant issue of appellant's disability or need for medical treatment due to either his November 21, 2014 or April 4, 2016 employment injuries, it is of diminished probative value.¹⁵

¹¹ *Id.*

¹² *Id.*

¹³ *D.M.*, Docket No. 17-1052 (issued January 24, 2019).

¹⁴ *A.M.*, Docket No. 17-1192 (issued September 19, 2018).

¹⁵ *L.B.*, Docket No. 18-0560 (issued August 20, 2018).

In an impairment evaluation dated May 2, 2018, Dr. Moufawad diagnosed a left shoulder strain and a left shoulder rotator cuff tear, supraspinatus tear, subscapularis tear, and retraction tear of the long head of the biceps with retraction. He attributed the diagnosed conditions to appellant's April 4, 2016 employment injury. Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.¹⁶ Dr. Moufawad's opinion regarding causation is conclusory in nature as he failed to explain how the April 4, 2016 employment injury resulted in additional diagnosed conditions.¹⁷ Therefore, his report is of limited probative value on this issue.¹⁸

The Board thus finds that appellant has not established continuing residuals or disability after December 6, 2017.¹⁹

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 OWCP properly terminated appellant's wage-loss compensation and medical benefits effective December 6, 2017. The Board further finds that he has not met his burden of proof to establish continuing employment-related disability or residuals after December 6, 2017 due to his accepted employment injuries.

¹⁶ *D.H.*, Docket No. 18-1159 (issued February 15, 2019).

¹⁷ *K.K.*, Docket No. 18-1209 (issued March 7, 2019).

¹⁸ *Id.*

¹⁹ *Supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 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