

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

_____)	
L.S., Appellant)	
)	
and)	Docket No. 19-0959
)	Issued: September 24, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Ridgewood, NY, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 1, 2019 appellant, through counsel, filed a timely appeal from a March 7, 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 7, 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.*

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective August 14, 2018, as she no longer had disability or the need for medical treatment causally related to her December 18, 2017 employment injury; and (2) whether she met her burden of proof to establish continuing residuals or employment-related disability on or after August 14, 2018.

FACTUAL HISTORY

On December 18, 2017 appellant, then a 48-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her left buttocks and left shoulder when she fell down stairs while in the performance of duty. She stopped work on December 18, 2017. OWCP accepted the claim for thoracic sprain/strain, lumbar sprain, cervical sprain, cervical, thoracic, and lumbar contusions, and a left shoulder contusion. It subsequently expanded acceptance of the claim to include subacromial/subdeltoid bursitis of the left shoulder. OWCP paid appellant wage-loss compensation for total disability on the supplemental rolls from February 2 to May 26, 2018 and on the periodic rolls from May 27 to June 23, 2018, when she returned to full-time modified employment.

In a report dated January 11, 2018, Dr. Philip Baldeo, who specializes in family medicine, discussed appellant's history of an employment injury on December 18, 2017 when she fell down stairs and her continued complaints of pain in her neck, left shoulder, low back, and weakness and numbness of the upper and lower extremities bilaterally. He diagnosed persisting cervical myofasciitis, traumatic cervical pain syndrome, thoracic and lumbosacral sprain/strain, traumatic lumbar radiculitis/radiculopathy, and disc herniations, contusions, and internal derangement of the cervical, thoracic, and lumbar spine. Dr. Baldeo attributed the diagnosed conditions to appellant's employment injury "if the history given by [appellant] is true." He opined that she was temporarily totally disabled.⁴

A January 29, 2018 magnetic resonance imaging (MRI) scan of the cervical spine revealed minimal C5-6 disc bulging. A January 31, 2018 MRI scan of the left shoulder revealed mild subacromial subdeltoid bursitis and small to moderate glenohumeral joint effusion. Electrodiagnostic studies obtained January 26, 2018 revealed right carpal tunnel syndrome.

On April 2, 2018 OWCP referred appellant to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated April 23, 2018, Dr. Sultan discussed appellant's history of a December 18, 2017 employment injury and reviewed the evidence of record including January 31, 2018 MRI scans of the cervical spine and left shoulder. On examination he found intact sensation of the upper extremities with good grip strength. Dr. Sultan measured good range of motion of the cervical and thoracolumbar spine and the left shoulder. He further found negative straight leg raise bilaterally and intact sensation of the lower extremities. Dr. Sultan opined that the findings on physical examination of appellant's cervical and thoracolumbar spine and left shoulder were

⁴ Dr. Baldeo provided similar reports on February 15 and April 10, 2018. He further provided periodic nerve blocks throughout 2018 and 2019.

unremarkable. He related, “She is noted to be status post trauma to the cervical spine, left shoulder, and thoracolumbar spine causally related to the occurrence of December 18, 2017 and now clinically resolved.” Regarding the findings on MRI scans, Dr. Sultan attributed the subacromial/subdeltoid bursitis to the accepted employment injury, but found that the minimal C5-6 disc bulging was unrelated to her employment. He opined that appellant had no further objective findings or residuals of her cervical spine, thoracolumbar spine, or left shoulder conditions and that she could resume her usual employment. In an accompanying work capacity evaluation (OWCP-5c), Dr. Sultan found that appellant could work full time without limitations.

In duty status reports (Form CA-17) dated April 13 through June 15, 2018, Dr. Baldeo diagnosed bursitis of the left shoulder and a cervical and lumbar spine condition, provided a series restrictions, and indicated that he had not advised appellant to resume work.

An April 23, 2018 MRI scan of appellant’s lumbar spine revealed a disc herniation at L3-4, a disc bulge at L4-5 with an annular tear on the left, and mild-to-moderate central canal stenosis and foraminal narrowing from L3 to L5.

In a June 15, 2018 return to work certificate, Dr. Baldeo advised that he was treating appellant for an employment injury and that he was unsure when she could resume her usual employment duties.

In an addendum report dated June 18, 2018, Dr. Sultan opined that appellant had sustained only a soft trauma injury on December 18, 2017 to her cervical and thoracolumbar spine and left shoulder. He opined that she had no residuals of her accepted employment-related conditions and no work restrictions.

By decision dated June 18, 2018, OWCP denied appellant’s request to expand the acceptance of her claim to include lumbar disc displacement, lumbar radiculitis/radiculopathy, cervical disc herniation, and cervical, thoracic, and lumbar internal derangement. It found that she had not submitted reasoned medical evidence explaining how the diagnosed conditions were caused or aggravated by her December 18, 2017 employment injury.

On June 23, 2018 appellant returned to limited-duty full-time employment with the employing establishment.

On July 2, 2018 OWCP advised appellant of its proposed termination of her wage-loss compensation and medical benefits as the evidence established that she no longer had any employment-related residuals or disability due to employment injury. It afforded her 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

Thereafter, appellant submitted a May 24, 2018 report from Dr. Baldeo. Dr. Baldeo reviewed her history of injury and complaints of pain in her neck, left shoulder, back, and buttocks. He provided findings on examination and diagnosed resolving cervical myofascitis, traumatic cervical spine syndrome, resolved thoracic sprain/strain, traumatic lumbosacral spine sprain and disc displacement, traumatic lumbar radiculitis/radiculopathy, resolving traumatic disc herniations of the cervical and lumbar spine, traumatic internal derangement of the lumbar spine, and a contusion of the cervical and lumbar spine and the left shoulder. Dr. Baldeo attributed appellant’s condition to the December 18, 2017 employment injury and found that she was totally disabled. He provided a substantially similar report on June 25, 2018.

Appellant further submitted June 20 and July 16, 2018 letters of medical necessity from Dr. Baldeo requesting nerve blocks and physical therapy reports dated June through August 2018.

On July 24 and 25 and August 3, 2018 Dr. Baldeo provided a physical performance evaluation. On July 25, 2018 he described the range of motion and strength findings and recommended treatment.

In a duty status report (Form CA-17) dated July 26, 2018, Dr. Baldeo indicated that appellant was partially disabled from employment and provided work restrictions.

By decision dated August 13, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits effective August 14, 2018. It found that the opinion of Dr. Sultan constituted the weight of the evidence and established that she had no further residuals of her accepted employment injury.

On August 23, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant subsequently submitted a July 6, 2018 report from Dr. Baldeo. Dr. Baldeo reviewed Dr. Sultan's report and advised that he did not review all the MRI scans and electrodiagnostic test results, noting that some test results were not available at the time of his report. He maintained that his examination was brief and questioned his findings. Dr. Baldeo related that Dr. Sultan's report was "being used to terminate [appellant's] injury in a work[-]related trauma that I believe is legitimate...."

In a report dated August 22, 2018, Dr. Baldeo noted that appellant was currently working, but continued to experience left shoulder, neck, and low back pain. He diagnosed persisting cervical myofascitis and pain syndrome, resolved thoracic sprain/strain, persisting lumbosacral disc displacement and radiculitis, cervical and lumbar disc herniations and internal derangement, and contusions of the cervical and lumbar spine and left shoulder. Dr. Baldeo found that appellant was partially disabled due to her employment injury.⁵

In duty status reports (Form CA-17) dated March 5 through May 6, 2019, Dr. Baldeo diagnosed bursitis of the left shoulder and a cervical and lumbar spine condition, and provided work restrictions.

A telephonic hearing was held on January 3, 2019. Appellant described her difficulties performing activities because of her left shoulder and back condition.

In a report dated January 30, 2019, Dr. Baldeo asserted that Dr. Sultan had inaccurately represented appellant's condition. He described her continued complaints and opined that she was partially disabled due to her employment injury. Dr. Baldeo recommended electrodiagnostic testing.

By decision dated March 7, 2019, OWCP's hearing representative affirmed the August 13, 2018 decision. The hearing representative found that the opinion of Dr. Sultan established that appellant had no further disability or need for medical treatment due to her accepted conditions.

⁵ Dr. Baldeo continued to treat appellant with nerve blocks.

The hearing representative determined, however, that upon return of the case record OWCP should further develop the issue of whether the acceptance of her claim should be expanded to include additional conditions related to the accepted December 18, 2017 employment injury.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁶ After it has determined that an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁷ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁹ 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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits effective August 14, 2018 as she no longer had disability or the need for medical treatment causally related to her December 18, 2017 employment injury.

OWCP accepted that appellant sustained thoracic sprain/strain, lumbar sprain, cervical sprain, cervical, thoracic, and lumbar contusions, a left shoulder contusion, and left shoulder subacromial/subdeltoid bursitis due to a December 18, 2017 employment injury. It paid her wage-loss compensation for disability from February 2 to June 23, 2018, when she resumed limited-duty employment.

On April 23, 2018 Dr. Sultan, an OWCP referral physician, reviewed the history of appellant's employment injury and the medical evidence of record, including the results of cervical and left shoulder MRI scans. On examination he found good upper extremity sensation, range of motion, and grip strength. Dr. Sultan additionally found intact lower extremity sensation and a negative straight leg. He determined that the physical findings for appellant's cervical and thoracolumbar spine and left shoulder were unremarkable and that her trauma to these areas had resolved. Dr. Sultan opined that she could return to her usual employment. In a supplemental report, he found that appellant had no residuals of her accepted conditions and no work restrictions. Dr. Sultan provided a thorough review of the factual and medical background and accurately summarized the relevant medical evidence. Moreover, he provided detailed findings on

⁶ *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

⁷ *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁸ *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

⁹ *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

¹⁰ *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

examination and reached conclusions regarding appellant's condition which comported with his findings.¹¹ Consequently, Dr. Sultan's opinion is entitled to the weight of the evidence and establishes that appellant had no further disability or need for medical treatment due to her December 18, 2017 employment injury as of August 14, 2018.¹²

The remaining evidence submitted prior to OWCP's termination of appellant's compensation is insufficient to establish that she had any further disability or residuals of her accepted employment-related conditions. In reports dated May 24 and June 25, 2018, Dr. Baldeo diagnosed resolving cervical myofasciitis, traumatic cervical spine syndrome, resolved thoracic sprain/strain, traumatic lumbosacral spine sprain and disc displacement, traumatic lumbar radiculitis/radiculopathy, resolving traumatic disc herniations of the cervical and lumbar spine, traumatic internal derangement of the lumbar spine, and a contusion of the cervical and lumbar spine and the left shoulder. He attributed the diagnosed conditions to appellant's employment injury and opined that she was totally disabled. Dr. Baldeo, however, failed to provide any rationale for his opinion. The Board has held that a medical report is of limited probative value on a given medical issue if it contains a medical opinion which is unsupported by medical rationale.¹³

In duty status reports (Form CA-17) dated April 13 through June 15, 2018, Dr. Baldeo diagnosed bursitis of the left shoulder and a cervical and lumbar spine condition. He indicated that he had not advised appellant to return to work. In a duty status report dated July 26, 2018, Dr. Baldeo determined that she was partially disabled from employment. The duty status report is merely a form report and does not contain an opinion on whether the accepted employment injury caused disability from employment; consequently, it is of no probative value on the issue of causal relationship.¹⁴

The record also contains reports from Dr. Baldeo dated June through August 2018 regarding physical performance evaluations and the administration of nerve blocks. These reports do not address the issue of causation and thus are of little probative value.¹⁵

In a return to work form dated June 15, 2018, Dr. Baldeo indicated that he was treating appellant for an employment injury and that he was unsure when she could return to work. His form report, however, is of limited probative value as it failed to provide medical rationale explaining how she had continuing disability causally related to the accepted employment injury.¹⁶

¹¹ *O.S.*, Docket No. 18-1549 (issued February 7, 2019).

¹² *O.W.*, Docket No. 17-1881 (issued May 1, 2018).

¹³ *See M.H.*, Docket No. 17-0210 (issued June 3, 2018).

¹⁴ *L.D.*, Docket No. 19-0263 (issued June 19, 2019).

¹⁵ *D.O.*, Docket No. 16-1726 (issued October 26, 2017).

¹⁶ *See J.F.*, Docket No. 17-1716 (issued March 1, 2018).

Appellant further submitted physical therapy reports dated June through August 2018. However, physical therapists are not considered physicians as defined under FECA and thus their opinions are of no probative value.¹⁷

The Board finds that the weight of the evidence establishes that appellant had no further employment-related disability or need for medical treatment effective August 14, 2018, the date OWCP terminated her wage-loss compensation and medical benefits.¹⁸

LEGAL PRECEDENT -- ISSUE 2

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing residuals or disability on or after that date causally related to the accepted injury.¹⁹ To establish causal relationship between the accepted conditions 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 causal relationship.²⁰

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing employment-related disability on or after August 14, 2018.

Following the termination of her wage-loss compensation, appellant submitted a July 6, 2018 report from Dr. Baldeo. Dr. Baldeo asserted that Dr. Sultan had failed to review all of the diagnostic studies and that he performed a brief examination. He maintained that appellant had sustained employment-related trauma. However, Dr. Baldeo again failed to provide any rationale explaining why she had continued disability or the need for medical treatment causally related to her accepted conditions of thoracic sprain/strain, lumbar sprain, cervical sprain, cervical, thoracic, and lumbar contusions, a left shoulder contusion, and left shoulder subacromial/subdeltoid bursitis. Consequently, his report is of diminished probative value.²¹

In a report dated August 22, 2018, Dr. Baldeo discussed appellant's continued complaints of left shoulder, neck, and low back pain. He diagnosed persisting cervical myofasciitis and pain syndrome, resolved thoracic sprain/strain, persisting lumbosacral disc displacement and radiculitis, cervical and lumbar disc herniations and internal derangement, and contusions of the cervical and lumbar spine and left shoulder. Dr. Baldeo opined that appellant remained partially disabled due to her employment injury. He did not, however, support his finding of continued

¹⁷ The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8102(2); *see B.R.*, Docket No. 19-0309 (issued June 19, 2019).

¹⁸ *Id.*

¹⁹ *L.C.*, Docket No. 18-1759 (issued June 26, 2019).

²⁰ *Id.*

²¹ *See J.F.*, *supra* note 16.

employment-related disability and residuals with medical reasoning.²² A mere conclusion regarding causation and disability without supporting medical rationale is insufficient to meet appellant's burden of proof.²³ Further, Dr. Baldeo attributed appellant's disability, in part, to conditions not accepted or approved by OWCP as due to an employment injury, and thus she bears the burden of proof to establish that these conditions are causally related to the employment injury through reasoned medical evidence.²⁴ He provided no rationale explaining how physiologically the movements involved in the employment incident caused or contributed to the diagnosed conditions; therefore, his report is insufficient to meet her burden of proof.²⁵

In duty status reports (Form CA-17) dated March 5 through May 6, 2019, Dr. Baldeo diagnosed bursitis of the left shoulder and a cervical and lumbar spine condition, and provided a series of work restrictions. As discussed, however, the form reports contain no opinion regarding causation and thus are of no probative value on the issue of causal relationship.²⁶

On January 30, 2019 Dr. Baldeo asserted that Dr. Sultan had inaccurately represented appellant's condition. He described her continued complaints and opined that she was partially disabled due to her employment injury. Dr. Baldeo recommended electrodiagnostic testing. He did not, however, specifically identify how Dr. Sultan misrepresented appellant's condition or explain how any continuing residuals and partial disability resulted from the conditions accepted as causally related to her December 18, 2017 employment injury.²⁷ Appellant, therefore, has not established continuing residuals or disability on or after August 14, 2018 causally related to the accepted employment injury.²⁸

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 August 14, 2018 as she no longer had disability or the need for medical treatment causally related to her December 18, 2017 employment injury. The Board further finds that she has not met her burden of proof to establish continuing employment-related residuals or disability on or after August 14, 2018.

²² See *T.W.*, Docket No. 18-1573 (issued July 19, 2019).

²³ See *L.G.*, Docket No. 19-0142 (issued August 8, 2019).

²⁴ *D.J.*, Docket No. 18-0200 (issued August 12, 2019).

²⁵ *M.E.*, Docket No. 18-0940 (issued June 11, 2019).

²⁶ See *L.D.*, *supra* note 14.

²⁷ See *H.Y.*, Docket No. 18-1673 (issued May 20, 2019).

²⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 24, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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