

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

S.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Union Springs, AL, Employer)

**Docket No. 19-1837
Issued: June 9, 2020**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On September 3, 2019 appellant filed a timely appeal from a July 9, 2019 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 to consider 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 July 9, 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 OWCP has met its burden of proof to terminate appellant's entitlement to wage-loss compensation benefits, effective February 11, 2019, as she no longer had residuals or disability causally related to her accepted September 8, 2018 employment-related injury.

FACTUAL HISTORY

On September 22, 2018 appellant, then a 51-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on September 8, 2018 she sustained a left wrist sprain when she fell while being chased by three dogs as she was delivering parcels to a customer's front door while in the performance of duty. She stopped work on the date of injury and has not returned. On July 3, 2019 OWCP accepted appellant's traumatic injury claim for other specified sprain of the left wrist, subsequent encounter. It found, however, that the evidence of record was insufficient to accept her diagnosed back conditions. OWCP advised appellant of the type of medical evidence needed to expand the acceptance of her claim. It paid her retroactive wage-loss compensation benefits on the supplemental rolls for the period October 24 to December 21, 2018 for her accepted left wrist condition.⁴

In a January 22, 2019 development letter, OWCP again informed appellant of the deficiencies of her consequential injury claim and the evidence necessary to establish additional conditions as work related.

Thereafter, OWCP received a January 28, 2019 letter from Dr. Raymond D. Godsil, Jr., an attending Board-certified orthopedic surgeon. Dr. Godsil reported a history of the accepted September 8, 2018 employment injury. He noted appellant's diagnosis of small disc herniation and advised that, certainly trauma can contribute to a disc herniation since the annulus fibrosus ages and can be compromised with trauma.

OWCP also received a February 11, 2019 report and February 12, 2019 consult note from Dr. David C. Rehak, an attending Board-certified orthopedic surgeon. Dr. Rehak indicated that he evaluated appellant on February 11, 2019. He noted that appellant sustained a left wrist sprain and contusion on September 8, 2018. Dr. Rehak reported significant improvement, good motion, no swelling, and a good diagnosis. He also reported that appellant had a "slick click" in her wrist. Dr. Rehak advised that no additional medical treatment was indicated. He determined that appellant had reached maximum medical improvement. Dr. Rehak released her to return to work without restriction.

In a March 5, 2019 clinic chart note and letter, Dr. Godsil diagnosed other intervertebral disc displacement and left wrist and low back pain causally related to the accepted September 8, 2018 employment injury.

On April 2, 2019 OWCP informed Dr. Godsil of the deficiencies of his March 5, 2019 letter. It requested that he provide a well-rationalized opinion supported by objective findings explaining how the accepted September 8, 2018 employment injury caused appellant's condition.

⁴ On January 2, 2019 appellant filed a claim for compensation (Form CA-7) for the period September 8 through December 21, 2018.

OWCP afforded Dr. Godsil 30 days to submit the requested evidence. Dr. Godsil did not submit additional evidence.

OWCP received a May 29, 2019 prescription form from Dr. Tahir Siddiq, a Board-certified internist, who recommended that appellant be excused from work until June 29, 2019 because she was unable to perform her duties.

In a July 9, 2019 letter, OWCP terminated appellant's wage-loss compensation, effective February 11, 2019, finding that the weight of the medical evidence rested with Dr. Rehak who concluded in his February 11, 2019 report that she had no disability due to her accepted September 8, 2018 employment-related injury.⁵

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁶ 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.⁷ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.⁹ Section 10.126 of Title 20 of the Code of Federal Regulations provides that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.¹⁰ OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.¹¹ These requirements are supported by Board precedent.¹²

⁵ It advised that this decision did not terminate her medical benefits.

⁶ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁷ *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁸ *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁹ 5 U.S.C. § 8124(a).

¹⁰ 20 C.F.R. § 10.126.

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

¹² *J.W.*, Docket No. 19-0199, *Order Remanding Case* (issued January 6, 2020); *R.P.*, Docket No. 18-1128 (issued December 17, 2018); *R.B.*, Docket No. 16-1696 (issued September 7, 2017); *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

ANALYSIS

The Board finds that OWCP has not met its burden of proof to terminate entitlement to appellant's wage-loss compensation benefits, effective February 11, 2019.

OWCP accepted appellant's claim for other specified sprain of the left wrist, subsequent encounter. Appellant received retroactive wage-loss compensation on the supplemental rolls for the period October 24 to December 21, 2018 for her accepted left wrist condition. By decision dated July 9, 2019, OWCP terminated appellant's wage-loss compensation benefits, effective February 11, 2019, based on the February 11 and 12, 2019 reports of Dr. Rehak, appellant's physician, who opined that appellant could return to work without restrictions as of February 11, 2019 and that there was no need for further medical treatment. At the time of OWCP's purported termination decision, however, appellant was not receiving wage-loss compensation for disability from work.¹³ She only had previously received retroactive wage-loss compensation for the closed period October 24 to December 21, 2018. OWCP did not explain why appellant's entitlement to wage-loss compensation for disability was terminated in light of the fact that she was not receiving monetary compensation for disability at the time of its purported termination decision. As such, OWCP did not discharge its responsibility to provide appellant with a statement explaining the disposition so that she could understand the basis for the decision. As noted above, section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.¹⁴ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.¹⁵

For these reasons, the Board finds that OWCP has not met its burden of proof to terminate appellant's entitlement to wage-loss compensation benefits, effective February 11, 2019.¹⁶

¹³ *J.E.*, Docket No. 14-0586 (issued September 2, 2014).

¹⁴ *Supra* note 9.

¹⁵ *Supra* note 10.

¹⁶ *S.W.*, Docket No. 17-1837, *Order Remanding Case* (issued September 18, 2019); *see also C.J.*, Docket No. 15-1414 (issued December 21, 2015).

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's entitlement to wage-loss compensation benefits, effective February 11, 2019.

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 9, 2020
Washington, DC

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

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board