

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

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<b>B.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-0732</b>
	)	<b>Issued: March 11, 2020</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Attica, NY, Employer</b>	)	
_____	)	

*Appearances:*  
Erik B. Blowers, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 22, 2018 appellant, through counsel, filed a timely appeal from a September 13, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the September 13, 2017 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 evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 6, 2017, as she no longer had residuals or disability causally related to her accepted January 9, 2015 employment injury.

## **FACTUAL HISTORY**

On January 12, 2015 appellant, then a 50-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 9, 2015 she sustained a head injury as a result of a tractor trailer running into her stopped postal vehicle when delivering mail while in the performance of duty. She stopped work that same day. OWCP accepted appellant's claim for a neck sprain and postconcussion syndrome, and it paid her wage-loss compensation on the supplemental rolls commencing February 24, 2015.

In an authorization for examination and/or treatment report (Form CA-16) dated January 9, 2015, Dr. John Slobodzian, Board-certified in emergency medicine, indicated that appellant sustained a neck strain and head injury due to a motor vehicle accident.

Appellant received periodic medical treatment for her neck/upper extremity pain and headache complaints from several attending physicians, including Dr. Minsoo Kang, Board-certified in neurology. She underwent a functional capacity evaluation (FCE) on June 11, 2015, which determined that she was capable of horizontal lifting and front lift carrying continuously for 10 percent of an eight-hour workday, as well as pushing and pulling continuously for 9 percent of an eight-hour workday, intermixed with other activity.

In June 2015, OWCP referred appellant to Dr. Patrick Hughes, Board-certified in neurology, for a second opinion examination. It requested that he evaluate whether appellant continued to have residuals/disability causally related to her accepted January 9, 2015 employment injury.

In a July 28, 2015 report, Dr. Hughes indicated that he had reviewed a statement of accepted facts (SOAF) and appellant's medical history and records. Upon physical examination, he reported that appellant could walk unaided and got on and off the examining table without assistance. Appellant's visual fields were full to confrontation and her extraocular movements were full. Dr. Hughes advised that appellant's pupils were central and equal, and her facial symmetry and strength were normal. He reported that motor strength was normal in her upper extremities and that pain sensations were normal. In the impression section of the report, Dr. Hughes noted, "[Appellant] sustained a cervical and thoracic strain and postconcussion syndrome, causally related to her work injury of January 9, 2015." He advised that she had no objective findings to indicate that her cervical sprain and postconcussion syndrome conditions were still present and active. Dr. Hughes further noted that appellant "did not sustain a head injury and, therefore, does not suffer from a post-concussion syndrome." He opined that appellant's accepted work-related conditions had resolved without residuals and may have resolved by

March 9, 2015. Dr. Hughes concluded that appellant had made a full recovery and advised that she was not restricted from performing her regular duties.<sup>4</sup>

In a September 15, 2015 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits because she ceased to have residuals/disability causally related to her accepted January 9, 2015 employment injury. It advised her that the proposed action was based on the opinion of Dr. Hughes and afforded her 30 days to submit additional evidence or argument challenging the proposed action.

In response, appellant submitted several reports from attending physicians, which primarily addressed her neck pain/headache complaints.

By decision dated October 20, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical evidence was represented by the opinion of Dr. Hughes.

On October 28, 2015 appellant, through then counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on July 19, 2016.

By decision dated October 3, 2016, OWCP's hearing representative vacated the prior decision and remanded the case for further medical development finding that Dr. Hughes' July 28, 2015 second opinion report failed to follow the accepted facts of the case and failed to evaluate whether appellant continued to have residuals of the accepted postconcussion syndrome due to the January 9, 2015 employment injury. He remanded the case for OWCP to request a supplemental report from Dr. Hughes to properly evaluate all of the accepted conditions in the claim and then issue a *de novo* decision as to whether appellant continued to suffer residuals of her accepted neck sprain and postconcussion syndrome conditions.

On November 17, 2016 OWCP referred appellant to Dr. Hughes for a supplemental evaluation addressing the concerns of OWCP's hearing representative.

In a December 8, 2016 supplemental report, Dr. Hughes indicated that appellant presented with complaints of headaches occurring in various locations lasting anywhere from 50 to 90 minutes, moderate in intensity, and associated with photophobia and phonophobia. Appellant reported that she had a headache every few weeks and neck pain that was constantly present, as well as pain in the right shoulder, right elbow, right wrist, and right hand. She also had a lot of pain in the right index finger. Dr. Hughes found that appellant's visual fields were full to confrontation. Extraocular movements were full, pupils were central and equal, and facial symmetry and strength were normal. Dr. Hughes noted that the soft palate moved well on phonation and the tongue protruded in the midline. Appellant's strength was normal in the deltoid, biceps, triceps, infraspinati, brachioradialis, extensor carpi radialis, extensor carpi ulnaris, extensor digitorum, and interossei muscles. Light touch and pain sensation were normal in the upper and lower extremities. Dr. Hughes concluded that appellant was not suffering from the accepted conditions and opined that they had resolved. He noted that appellant was working as a

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<sup>4</sup> In a work capacity evaluation (Form OWCP-5c) dated August 18, 2015, Dr. Hughes indicated that appellant could perform her usual job without restriction.

rural carrier and had been doing so on a full-time basis for the whole year. Dr. Hughes advised that she was able to continue working full duty without restrictions.<sup>5</sup>

Appellant submitted a January 6, 2017 report from Dr. Kang who diagnosed chronic post-traumatic headache, not intractable, cervicgia, myalgia, and migraine without aura, not intractable, with status migrainosus. Dr. Kang indicated that appellant reported sustaining migraine and cervicgia conditions due to an automobile accident that occurred on January 9, 2015 when she was rear-ended by another driver and hit her head on the steering wheel. Appellant further reported that she experienced a least one full-blown migraine per week and Dr. Kang advised her to undergo multiple peripheral nerve blocks in her face and occipital nerve blocks for further migraine prevention. Regarding her cervical condition, Dr. Kang provided prescriptions for topical medication and recommended a magnetic resonance imaging (MRI) scan of the cervical spine in conjunction with electromyography and nerve conduction velocity (EMG/NCV) studies.<sup>6</sup>

In April 2017, OWCP requested that Dr. Hughes provide additional discussion of his opinion regarding whether appellant had residuals of the January 9, 2015 employment injury. In a supplemental report dated May 2, 2017, Dr. Hughes reiterated his opinion that appellant sustained a head injury with a cerebral concussion, followed by a postconcussive syndrome, which had resolved and a cervical strain which had resolved. He reported that appellant had no objective findings to substantiate her complaints, and therefore, he felt that the accepted conditions had resolved and appellant did not require ongoing medical treatment. Dr. Hughes also reiterated his opinion that appellant was capable of full-duty work without restrictions.<sup>7</sup>

In a June 28, 2017 letter, OWCP notified appellant that it proposed to terminate her wage-loss compensation and medical benefits because her accepted conditions had resolved without residuals. It advised her that its proposed action was based on Dr. Hughes' second opinion reports. OWCP afforded appellant 30 days to submit additional evidence or argument in regard to the proposed action.

In response, appellant submitted an April 28, 2017 MRI scan procedure order for her diagnosis of cervicgia and another copy of Ms. Morrill's April 28, 2017 report. She also submitted a July 6, 2017 statement from her then counsel who objected to the proposed termination of benefits.

By decision dated September 13, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits effective September 6, 2017. It found the weight of the evidence was represented by the opinion of Dr. Hughes.

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<sup>5</sup> In a Form OWCP-5c dated December 15, 2016, Dr. Hughes indicated that appellant could perform her usual job without restriction.

<sup>6</sup> In reports dated January 12, February 10, March 24, and April 28, 2017, Arica Morrill, a physician assistant, discussed her treatment of appellant's medical conditions.

<sup>7</sup> The case record also contains a May 16, 2017 report from Dr. Hughes, which is identical to his May 2, 2017 report.

## 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.<sup>8</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>9</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>10</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>11</sup> 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.<sup>12</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 6, 2017, as she no longer had residuals or disability causally related to her accepted January 9, 2015 employment injury.

In a December 8, 2016 report, Dr. Hughes, an OWCP referral physician, found that appellant's visual fields were full to confrontation. He noted that her extraocular movements were full, pupils were central and equal, and facial symmetry and strength were normal. Dr. Hughes reported that strength was normal in the deltoid, biceps, triceps, infraspinati, brachioradialis, extensor carpi radialis, extensor carpi ulnaris, extensor digitorum, and interossei muscles. In addition, light touch and pain sensation were normal in the upper and lower extremities. Dr. Hughes concluded that appellant was not suffering from the accepted January 9, 2015 employment conditions and opined that they had resolved. He noted that appellant was working as a rural carrier and had been doing so on a full-time basis for the whole year and advised that she was able to continue working full duty without restrictions.

In a supplemental report dated May 2, 2017, Dr. Hughes reiterated his opinion that appellant sustained a head injury with a cerebral concussion, followed by a postconcussive syndrome, which had resolved and a cervical strain which had resolved. He reported that appellant had no objective findings to substantiate her complaints and, therefore, he felt that the accepted

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<sup>8</sup> *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).

<sup>9</sup> *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).

<sup>10</sup> *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>11</sup> *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>12</sup> *See A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002);

conditions had resolved and appellant did not require ongoing medical treatment. Dr. Hughes also reiterated his opinion that appellant was capable of full-duty work without restrictions.

The Board finds that Dr. Hughes' reports, when read together, represent the weight of the medical evidence at the time OWCP terminated appellant's wage-loss and medical benefits effective September 6, 2017 and that OWCP properly relied on his reports in carrying out its termination action. The Board finds that he had full knowledge of the relevant facts and evaluated the course of appellant's accepted work-related conditions. Dr. Hughes' opinion is based on proper factual and medical history and his report contained a detailed summary of this history. He addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's conditions.<sup>13</sup> At the time benefits were terminated, Dr. Hughes found no basis on which to attribute any residuals or continued disability to appellant's accepted conditions. His opinion is found to be probative evidence and reliable. The Board finds that Dr. Hughes' opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted conditions of neck sprain and post-concussion syndrome.

Appellant submitted a January 6, 2017 report from Dr. Kang, an attending physician, who diagnosed chronic post-traumatic headache, cervicgia, myalgia, and migraine without aura, not intractable, with status migrainosus. Dr. Kang noted that appellant reported she sustained migraine and cervicgia conditions due to an automobile accident that occurred on January 9, 2015. However, he did not provide a clear opinion that appellant continued to have residuals/disability causally related to the accepted January 9, 2015 employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>14</sup> Therefore, Dr. Kang's January 6, 2017 report is of no probative value regarding continuing employment-related residuals/disability and is insufficient to overcome the weight of Dr. Hughes' reports or to create a conflict in the medical opinion evidence.

Appellant also submitted January 12, February 10, March 24, and April 28, 2017 reports from Ms. Morrill, a physician assistant. However, these reports do not constitute competent medical evidence because a physician assistant is not considered a "physician" as defined under FECA.<sup>15</sup> Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.<sup>16</sup>

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<sup>13</sup> See *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *Melvina Jackson*, 38 ECAB 443 (1987) (regarding the importance, when assessing medical evidence, of such factors as a physician's knowledge of the facts and medical history, and the care of analysis manifested and the medical rationale expressed in support of the physician's opinion).

<sup>14</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>15</sup> 5 U.S.C. § 8101(2). *B.K.*, Docket No. 19-0829 (issued September 25, 2019); *T.C.*, Docket No. 19-0227 (issued July 11, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

<sup>16</sup> *K.N.*, Docket No. 18-0060 (issued January 22, 2020).

Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to compensation benefits.<sup>17</sup>

On appeal appellant's present counsel argues that there is a conflict in the medical opinion evidence between the opinions of Dr. Hughes and Dr. Kang regarding continuing residuals/disability. However, the Board has explained that no conflict in the medical opinion evidence exists because Dr. Kang's report contained no opinion on causal relationship. Therefore, it was of no probative value and thus was insufficient to create such a conflict. Counsel also asserts that OWCP provided "highly prejudicial information in medical records" to Dr. Hughes, but he did not provide any explanation for this assertion.

Accordingly, the Board finds that Dr. Hughes' opinion continues to constitute the weight of the medical evidence and supports OWCP's decision terminating appellant's wage-loss compensation and medical benefits effective September 6, 2017.<sup>18</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> The Board notes that appellant submitted a Form CA-16 dated January 9, 2015. A properly completed Form CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**CONCLUSION**

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 6, 2017, as she no longer had residuals or disability causally related to her accepted January 9, 2015 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 13, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board