

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

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**T.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Duluth, GA, Employer**

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**Docket No. 19-1383  
Issued: March 27, 2020**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 11, 2019 appellant, through counsel, filed a timely appeal from a February 22, 2019 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 to consider 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 record provided to the Board includes evidence received after OWCP issued its February 22, 2019 decision. 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 has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 17, 2017, as she no longer had residuals or disability causally related to her accepted employment conditions; and (2) whether appellant has met her burden of proof to establish continuing employment-related disability or residuals, on or after September 17, 2017, due to the accepted employment conditions.

## **FACTUAL HISTORY**

On February 4, 2014 appellant, then a 33-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on January 27, 2014 she sustained injuries to her left knee, low back, and ribs when a deer leapt in front of her delivery vehicle and the vehicle hydroplaned and struck a tree while in the performance of duty. She stopped work on the date of injury and did not return. Appellant was separated from the employing establishment, effective February 14, 2014, due to disqualifying conditions during her probationary period. OWCP accepted the claim for closed rib fractures, a facial contusion, multiple contusions, lumbar sprain, and left medial meniscus tear.<sup>4</sup> It paid appellant wage-loss compensation for total disability from March 14 to August 23, 2014 on the supplemental rolls, and commencing August 24, 2014 on the periodic rolls. OWCP also authorized medical benefits.

On August 29, 2014 Dr. Darrell Lowrey, a Board-certified orthopedic surgeon, performed an OWCP-authorized arthroscopic partial left medial meniscectomy with limited chondroplasty and synovectomy. He returned appellant to light-duty work on September 25, 2014.<sup>5</sup> Dr. Lowrey referred appellant for a February 18, 2015 functional capacity evaluation, which demonstrated her ability to perform full-time work at the medium physical demand level. The test was deemed invalid due to appellant's self-limiting behaviors. In a June 3, 2015 report, Dr. Lowrey found that she had attained maximum medical improvement. He returned appellant to full-time medium-duty work.

In a July 28, 2016 report, Dr. Susan Butler-Sumner, a family practitioner, returned appellant to sedentary duty for two hours a day.

On May 8, 2017 OWCP referred appellant to Dr. Raju Vanapalli, a Board-certified orthopedist, for a second opinion examination. In a June 27, 2017 report, Dr. Vanapalli reviewed the medical record and a statement of accepted facts. He noted that OWCP accepted the claim for closed rib fractures, a lumbar sprain, left medial meniscal tear, and multiple contusions. On examination Dr. Vanapalli noted no paraspinal spasm or tenderness, limited lumbar motion, bilaterally positive straight leg raising tests at 60 degrees, a normal neurologic examination in all extremities, no instability or crepitus of the left knee, full extension and 140 degrees flexion of the left knee, no pain or tenderness to palpation over the ribs and chest wall, and full chest expansion without pain. He opined that the accepted conditions had resolved without residuals and no further

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<sup>4</sup> March 26, 2014 x-rays demonstrated subacute chronic nondisplaced lateral left 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> rib fractures. An April 3, 2014 magnetic resonance imaging (MRI) scan of the left knee demonstrated a tear of the posterior horn of the medial meniscus. An April 22, 2014 MRI scan of the cervical spine was within normal limits.

<sup>5</sup> On May 7, 2015 OWCP obtained a second opinion from Dr. Alexander N. Doman, a Board-certified orthopedic surgeon, who found no abnormalities on examination. Dr. Doman opined that the accepted injuries had resolved without residuals. He released appellant to light-duty work with restrictions.

treatment was needed as there were no objective findings of the left knee, left ribs, or lumbar spine on examination. Dr. Vanapalli returned appellant to full-time regular duty.

By notice dated July 27, 2017, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Vanapalli's opinion that the accepted conditions had ceased without residuals. It afforded her 30 days to submit additional evidence.

In response, appellant submitted an August 10, 2017 report from Dr. Butler-Sumner, noting that appellant had been under treatment since January 27, 2014 for closed-rib fractures, multiple contusions, a lumbar sprain, chronic migraines, and a torn left medial meniscus. Dr. Butler-Sumner noted in August 18, 2017 reports that appellant had symptoms in her left leg, left arm, and torso, but could perform limited-duty work. In August 23, 2017 reports, she found appellant able to perform full-time sedentary duty with restrictions.

In an August 23, 2017 report, Dr. Randall Anderson, Jr., a Board-certified orthopedic surgeon, returned appellant to full-time light-duty work with restrictions.

By decision dated September 14, 2017, OWCP terminated appellant's wage-loss and medical compensation benefits effective September 17, 2017, finding that Dr. Vanapalli's report was entitled to the weight of the medical evidence.

On September 26, 2017 appellant, through counsel, requested a telephonic oral hearing before a representative of OWCP's Branch of Hearings and Review. The oral hearing was held on March 7, 2018. At the hearing, appellant contended that the accepted rib fractures had not healed. She submitted additional evidence.

In a February 13, 2018 report, Dr. Marc O. Wall, a family practitioner, diagnosed non-union of left rib fractures.

February 21, 2018 chest x-rays interpreted by Dr. Joseph Burch, a Board-certified diagnostic radiologist, demonstrated no abnormalities of the bones or soft tissue of the chest wall. Dr. Burch opined that February 21 2018 x-rays of the left ribs demonstrated "multiple left-sided healed rib fractures" at ribs 5, 6, and 7 with areas of abnormal bone density, no expansible or lytic rib lesions, and no acute fracture identified. He noted an impression of "[r]emote rib fractures" of ribs 5, 6, and 7.

In a report dated February 26, 2018, Dr. Wall diagnosed non-union of left 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> rib fractures.

By decision dated April 12, 2018, an OWCP hearing representative affirmed the September 14, 2017 decision.

On June 12, 2018 appellant, through counsel, requested reconsideration. She submitted additional evidence.

In a May 10, 2018 report, Dr. Wall opined that appellant's chest pain was caused by non-union of left 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> rib fractures as demonstrated by February 21, 2018 x-rays. He contended that the February 21, 2018 x-rays interpreted by Dr. Burch demonstrated that the ends of the fracture sites had healed over, but not together, causing chronic chest pain.

By decision dated September 6, 2018, OWCP denied modification of the September 14, 2017 decision.

On December 10, 2018 appellant, through counsel, requested reconsideration. She submitted additional evidence.

In a September 25, 2018 report, Dr. Anderson diagnosed left knee pain due to osteoarthritis versus a possible medial meniscal tear. He noted that appellant was employed full time in the private sector as a cashier.

In an attending physician's report (Form CA-20) dated November 12, 2018, Dr. Anderson recommended a left knee arthroplasty to address a left meniscal tear with meniscal cyst.

By decision dated February 22, 2019, OWCP denied modification of the September 6, 2018 decision as the additional evidence submitted failed to outweigh or create a conflict with Dr. Vanapalli's opinion.

### **LEGAL PRECEDENT -- ISSUE 1**

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>6</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>7</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>8</sup>

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

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<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> *K.W.*, Docket No. 19-1224 (issued November 15, 2019); see *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>9</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>10</sup> *K.W.*, *supra* note 8; see *A.G.*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake*, *id.*

## **ANALYSIS -- ISSUE 1**

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 17, 2017, as she no longer had residuals or disability causally related to her accepted employment conditions.

OWCP referred appellant to Dr. Vanapalli to determine the status of her accepted conditions and her work capacity. In his June 27, 2017 report, Dr. Vanapalli described her January 27, 2014 employment injury and noted that her claim was accepted for a lumbar sprain, left meniscal tear, closed rib fractures, and multiple contusions. He indicated that appellant's physical examination revealed no objective findings of the accepted conditions. Dr. Vanapalli found no instability or crepitus of the left knee, full extension of the left knee with flexion at 140 degrees, no paraspinal spasm or tenderness, and no pain or tenderness in the ribs or chest wall. He opined that the accepted conditions had resolved, that appellant could return to work without restrictions, and there was no need for further medical treatment.

The Board finds that OWCP properly accorded the weight of the medical evidence to Dr. Vanapalli. Dr. Vanapalli based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion. He provided a well-rationalized opinion based on medical evidence regarding the accepted conditions causally related to appellant's January 27, 2014 employment injury. Accordingly, OWCP properly relied on Dr. Vanapalli's second-opinion report in terminating appellant's wage-loss compensation and medical benefits.<sup>11</sup>

The Board notes that appellant's physicians also found that appellant was no longer disabled for work. Dr. Lowrey returned her to light duty as of September 25, 2014. Dr. Butler-Sumner opined on July 28, 2016 that appellant could perform part-time sedentary work. In August 18 and 23, 2017 reports, she found appellant able to perform full-time sedentary work. Also, Dr. Anderson found appellant able to perform full-time sedentary duty as of August 23, 2017. However, these physicians did not provide a rationalized opinion as to whether appellant's restrictions were due to the accepted employment injuries. Therefore, their opinions are insufficient to overcome the weight of the medical evidence accorded to Dr. Vanapalli.<sup>12</sup>

The Board thus finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective September 17, 2017.

## **LEGAL PRECEDENT -- ISSUE 2**

Once OWCP properly terminates a claimant's compensation benefits, the burden shifts to appellant to establish continuing disability or residuals after that date, causally related to the accepted injury.<sup>13</sup> To establish causal relationship between the condition as well as any attendant

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<sup>11</sup> *K.W.*, *supra* note 8; *see N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

<sup>12</sup> *K.W.*, *supra* note 8; *see E.O.*, Docket No. 19-0472 (issued August 15, 2019); *J.P.*, Docket No. 16-1103 (issued November 25, 2016).

<sup>13</sup> *See S.M.*, Docket No. 18-0673 (issued January 25, 2019); *J.R.*, Docket No. 17-1352 (issued August 13, 2018).

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.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not met her burden of proof to establish continuing employment-related disability or residuals, on or after September 17, 2017, due to the accepted employment conditions.

Following the termination of her wage-loss compensation and medical benefits, appellant submitted reports dated February 13 and 26, and May 10, 2018 reports from Dr. Wall, who opined that the accepted left 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> rib fractures had not healed, causing chronic chest pain. Dr. Wall contended that, although Dr. Burch indicated that February 21, 2018 chest x-rays demonstrated that the rib fractures had healed, that the ends of the fractures had not healed together. However, he did not specify the objective clinical findings, which demonstrated that the accepted rib fractures had not resolved. Such rationale is particularly necessary as Dr. Vanapalli found no tenderness or other abnormality of the left ribs and chest wall on examination. Dr. Wall's opinion is therefore insufficient to meet appellant's burden of proof.<sup>15</sup>

Appellant also provided a September 25, 2018 report from Dr. Anderson, who diagnosed left knee pain due to osteoarthritis versus a possible medial meniscal tear. In a November 12, 2018 report, Dr. Anderson recommended a left knee arthroplasty to address a left meniscal tear. However, he did not explain whether the diagnosed left meniscal tear was caused or aggravated by the accepted left medial meniscus tear, or constituted a new injury.<sup>16</sup> Therefore, his opinion is insufficient to meet appellant's burden of proof.

Appellant has not submitted sufficiently rationalized medical evidence establishing employment-related disabilities or residuals on or after September 17, 2017 due to the accepted employment conditions. As such, the Board finds that she has not met her burden of proof.

On appeal counsel contends that OWCP applied an improper standard of causation to appellant's case and did not give due deference to the opinions of appellant's physicians. As noted above, OWCP properly found that appellant's physicians did not provide sufficient rationalized medical opinion to support disability for work or the need for continuing medical treatment due to the accepted employment conditions on and after September 17, 2017.

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 and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>14</sup> *Id.*

<sup>15</sup> *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *G.T.*, Docket No. 17-1959 (issued June 22, 2018).

<sup>16</sup> *D.G.*, *id.*

**CONCLUSION**

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 17, 2017, as she no longer had residuals or disability causally related to her accepted employment conditions. The Board further finds that appellant has not met her burden of proof to establish continuing employment-related disability or residuals, on or after September 17, 2017, due to the accepted employment conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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