

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

<p>C.B., Appellant</p> <p>and</p> <p>U.S. POSTAL SERVICE, MALVERNE POST OFFICE, Malverne, NY, Employer</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No. 20-0629</p> <p>Issued: May 26, 2021</p>
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<p><i>Appearances:</i> <i>Paul Kalker, Esq., for the appellant¹</i> <i>Office of Solicitor, for the Director</i></p>	<p><i>Case Submitted on the Record</i></p>
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DECISION AND ORDER

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

JURISDICTION

On January 27, 2020 appellant, through counsel, filed a timely appeal from a December 30, 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.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish intermittent disability for the period December 30, 2017 through April 20, 2018 due to her accepted

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.*

November 4, 2005 employment injury; (2) whether OWCP has met its burden of proof to terminate appellant's entitlement to wage-loss compensation and medical benefits, effective May 18, 2019, as she no longer had residuals or disability causally related to her November 4, 2005 employment injury; and (3) whether appellant has met her burden of proof to establish continuing residuals or employment-related disability on or after May 18, 2019.

FACTUAL HISTORY

On November 4, 2005 appellant, then a 41-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sprained the upper right side of her neck when she removed a relay bag while in the performance of duty. She continued to work in a modified-duty capacity and stopped work again on December 7, 2005. On April 17, 2006 OWCP accepted appellant's claim for neck strain. It paid her wage-loss compensation on the supplemental rolls, effective January 10, 2006. On June 21, 2006 appellant returned to part-time, modified-duty working four hours per day as a carrier technician and filed claims for intermittent disability. OWCP continued to pay her intermittent wage-loss compensation on the supplemental rolls for the remaining four hours per day. It placed appellant on the periodic rolls, effective April 12, 2009. By decision dated September 17, 2010, OWCP terminated her entitlement to wage-loss compensation and schedule award benefits, effective September 26, 2010, pursuant to 5 U.S.C. § 8106(c)(2) because she refused an offer of suitable work. In a May 21, 2014 decision, an OWCP hearing representative reversed the September 17, 2010 termination decision and reinstated appellant's entitlement to wage-loss compensation benefits. Appellant subsequently filed claims for wage-loss compensation (Form CA-7) for intermittent periods of disability.

Appellant continued to receive medical treatment. In a July 13, 2017 attending physician's report (Form CA-20), Dr. Conrad Cean, a Board-certified anesthesiologist, noted the November 4, 2005 employment injury and indicated that appellant suffered from cervicalgia and cervical radiculopathy from "heavy lifting." He checked a box marked "Yes" indicating that her condition was caused or aggravated by the described employment activity. Dr. Cean also indicated that appellant was partially disabled since June 2006.

In a July 13, 2017 work capacity evaluation form (Form OWCP-5c), Dr. Cean reported that appellant could work four hours per day with restrictions of pushing, pulling, and lifting up to 25 pounds for two hours, walking for up to two hours, and reaching above the shoulder for up to three hours.

On August 16, 2018 appellant filed a Form CA-7 claim for wage-loss compensation for intermittent disability during the period December 30, 2017 through April 20, 2018. On the reverse side of the claim form, a human resource management specialist for the employing establishment confirmed that appellant was claiming 243.39 hours of wage-loss compensation for leave without pay (LWOP). The accompanying Time Analysis Form (Form CA-7a) indicated that she was claiming compensation for: eight hours of LWOP on March 5, 2018; six to seven hours of LWOP on March 17, 2018; five to six hours of LWOP on March 10, 2018; four to five hours of LWOP on December 30, 2017, January 4, 8, 10, 12, 13, 20, 22, 24, 29, and 31, 2018, February 5, 7, 9, 10, 15, 16, and 17, 2018, March 5, 7, 12, 16, 19, 21, 22, 23, 28, and 31, 2018, and April 2 and 16, 2018; three to four hours of LWOP on January 3, 11, 17, 18, 25, 26, and 27, 2018, February 1,

2, 3, 8, 12, 14, and 28, 2018, March 8, 9, 14, 15, 24, 26, 29, and 30, 2018, and April 4, 5, 6, 7, and 18, 2018; and two to four hours of LWOP on January 6, 2018.³

In an August 31, 2018 development letter, OWCP informed appellant that no medical evidence was received to establish her claim for wage-loss compensation for the period December 30, 2017 through April 20, 2018. It advised her of the type of medical evidence necessary to establish her wage-loss compensation claim and afforded her 30 days to submit the necessary evidence.

By decision dated November 2, 2018, OWCP denied appellant's claim for wage-loss compensation due to disability for the period December 30, 2017 through April 20, 2018. It found that the medical evidence of record was insufficient to establish that she was unable to work modified duty causally related to her November 4, 2005 employment injury.

On December 19, 2018 OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions to Dr. Edward Mills, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of her November 4, 2005 employment injury. The SOAF noted that on November 5, 2005 she returned to full-time, limited-duty work as a city letter carrier.

In a January 15, 2019 report, Dr. Mills reviewed the SOAF and the medical evidence of record. He accurately described the November 4, 2005 employment injury and recounted appellant's complaints of neck pain. Dr. Mills indicated that she reportedly returned to work on November 5, 2005 and stopped work on January 20, 2017 for unrelated reasons. He noted that appellant "reportedly returned to work part time." Upon examination of her cervical spine, Dr. Mills observed tenderness to palpation over the right paraspinal muscles and no palpable muscle spasms. Neurological examination revealed good strength and intact sensation. Dr. Mills diagnosed cervical spine sprain. In response to OWCP's questions, he reported that the accepted condition of neck sprain had resolved and indicated that appellant could return to full duty as a letter carrier. Dr. Mills indicated that it was "unclear" if she was currently suffering from any other medical condition or concurrent nonwork-related disability.

On April 8, 2019 OWCP proposed to terminate appellant's wage-loss compensation benefits and medical benefits because she was no longer disabled or required medical treatment due to her accepted November 4, 2005 employment injury. It found that the weight of the medical evidence rested with the January 15, 2019 report of Dr. Mills, who found that she was no longer totally disabled from work or had residuals due to her accepted cervical injury. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination. No evidence was received within the allotted time.

By decision dated May 17, 2019, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective May 18, 2019. It found that the weight of medical evidence rested with Dr. Mills, OWCP's second opinion examiner, who concluded in his

³ On the Form CA-7a, the human resource management specialist indicated that appellant used four hours of LWOP on December 30, 2017 for surgery unrelated to her employment injury.

January 15, 2019 report that appellant had no disability or residuals causally related to her accepted November 4, 2005 work-related injury.

On October 1, 2019 appellant, through counsel, requested reconsideration of the November 2, 2018 decision. Counsel argued that appellant's cervical condition was more serious than a simple neck sprain and may include cervical bulging or herniated discs and loss of cervical lordosis. He also asserted that 14 years of medical evidence fully supported her continuing work-related disability.

On October 8, 2019 appellant, through counsel, requested reconsideration of the May 17, 2019 termination decision. He argued that the weight of medical evidence supported ongoing work-related disability. In the alternative, counsel argued that OWCP erred in terminating appellant's wage-loss compensation benefits without referral to a referee medical examination.

Appellant submitted a June 19, 2019 narrative report by Dr. Stephen J. Roth, a Board-certified neurologist, who indicated that he first treated her on July 11, 2018 for complaints of lower back pain and right lower extremity sensory symptoms since January 2017. Dr. Roth noted that initial examination of her lower extremities demonstrated significant pain limitations in the right lower extremity. He discussed his continued medical treatment. Dr. Roth reported that in his last June 18, 2019 evaluation appellant continued to complain of significant lower back pain radiating into her right hip and knee. He indicated that she was unable to work as a letter carrier because she was unable to sit or stand for prolonged periods of time or lift heavy objects. Upon physical examination, Dr. Roth observed discomfort with palpation of the paravertebral region of appellant's cervical spine and significant tenderness to palpation of the bilateral lumbar paravertebral region. He discussed her diagnostic studies and indicated that nerve conduction studies suggested lumbosacral radiculopathy. Dr. Roth opined that appellant would require continued treatment for her lower extremities.

By decision dated December 30, 2019, OWCP denied modification of the November 2, 2018 and May 17, 2019 decisions.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁶ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of

⁴ *Supra* note 2.

⁵ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

⁶ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

the accepted employment injury.⁷ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of the reliable, probative, and substantial medical evidence.⁸

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the specific employment factors identified by the claimant.⁹

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work for the period December 30, 2017 through April 20, 2018 due to her accepted November 4, 2005 employment injury.

In support of her claim, appellant submitted a Form CA-20 and Form OWCP-5c by Dr. Cean who noted the November 4, 2005 date of injury and indicated that she suffered from cervicgia and cervical radiculopathy from “heavy lifting.” Dr. Cean checked a box marked “Yes” indicating that her condition was caused or aggravated by the described employment activity. He also indicated that appellant was partially disabled since June 2006.

Although Dr. Cean noted that appellant remained partially disabled from work, he did not provide any medical reasoning to support his opinion on disability nor did he refer to any physical examination findings or other objective evidence to support his opinion that she remained partially disabled during the claimed period due to the accepted November 4, 2005 employment injury. The Board has found that findings on examination are generally needed to support a physician’s opinion that an employee is disabled from work.¹¹ These reports, therefore, are insufficient to establish appellant’s disability claim.

Moreover, the employing establishment indicated on the time analysis form that appellant had surgery on December 30, 2017 for an unrelated employment injury. The Board has held that,

⁷ *K.C.*, Docket No. 17-1612 (issued October 16, 2018); *William A. Archer*, 55 ECAB 674 (2004).

⁸ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

⁹ *K.H.*, Docket No. 19-1635 (issued March 5, 2020); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

¹⁰ *K.A.*, Docket No. 19-1564 (issued June 3, 2020); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *William A. Archer*, *supra* note 7.

¹¹ *R.C.*, Docket No. 17-0748 (issued July 20, 2018); *Dean E. Pierce*, 40 ECAB 1249 (1989).

when a claimant stops work for reasons unrelated to his or her accepted employment injury, he or she has no disability within the meaning of FECA.¹²

As the evidence of record is insufficient to establish that appellant's claimed period of intermittent disability from December 30, 2017 through April 20, 2018 was due to her November 4, 2005 employment injury, the Board finds that she has not met her burden of proof.

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.

LEGAL PRECEDENT -- ISSUE 2

According to FECA,¹³ once OWCP accepts a claim and pays compensation, it bears the burden of proof to justify termination or modification of benefits.¹⁴ It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.¹⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹⁷ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP did not meet its burden of proof to terminate appellant's entitlement to wage-loss compensation and medical benefits, effective May 18, 2019, as she no longer had residuals or disability causally related to her November 4, 2005 employment injury.

OWCP accepted that appellant sustained a neck sprain as a result of her November 4, 2005 employment injury. By decision dated May 17, 2019, it terminated her wage-loss compensation and medical benefits based on the opinion of Dr. Mills, the second opinion examiner, who

¹² *V.M.*, Docket No. 16-0062 (issued May 18, 2016); *V.B.*, Docket No. 12-0114 (issued June 13, 2012).

¹³ *Supra* note 2.

¹⁴ *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

¹⁵ *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see also I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

¹⁶ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

¹⁷ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹⁸ *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

concluded in a January 15, 2019 report that she no longer suffered residuals or disability due to her November 4, 2005 employment injury.

In a January 15, 2019 report, Dr. Mills reviewed the SOAF and accurately described the November 4, 2005 employment injury. He noted that appellant “reportedly returned to work part time.” Upon examination of her cervical spine, Dr. Mills observed tenderness to palpation over the right paraspinal muscles and no palpable muscle spasms. He diagnosed cervical spine sprain. In response to OWCP’s questions, Dr. Mills reported that the accepted condition of neck sprain had resolved and that appellant could return to full duty as a letter carrier.

The Board finds, however, that Dr. Mills’ opinion was conclusory in nature and did not contain sufficient medical reasoning to establish that appellant no longer had residuals or disability due to her November 4, 2005 employment injury.¹⁹ In assessing medical evidence, the number of physicians supporting one position or another is not controlling, the weight of such evidence is determined by its reliability, its probative value, and its convincing quality.²⁰ The factors that determine the probative medical evidence include the opportunity for and thoroughness of examination performed by the physician, the accuracy or completeness of the physician’s knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed by the physician on the issue addressed to him by OWCP.²¹

The Board finds that Dr. Mills’ report lacks sufficient medical reasoning to establish that appellant’s accepted neck sprain condition had resolved. Dr. Mills opined that her accepted neck sprain condition had resolved and that she could return to full duty as a letter carrier. He did not give any medical explanation as to how appellant’s physical examination findings established that her accepted condition had resolved. Rationalized medical evidence must include rationale explaining how the physician reached the conclusion he or she is supporting.²² Accordingly, the Board finds that Dr. Mills did not provide an opinion with sufficient medical reasoning to establish that appellant no longer had residuals or disability due to her accepted November 4, 2005 employment injury.²³

The Board further finds that OWCP provided Dr. Mills a deficient SOAF, which inaccurately reported that on November 5, 2005 appellant returned to full-time, limited duty as a city letter carrier.²⁴ The evidence of record reveals that on November 5, 2005 appellant returned to part-time, modified-duty work for four hours per day as a carrier technician.

¹⁹ See *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *S.J.*, Docket No. 17-0543 (issued August 1, 2017).

²⁰ *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *Nicolette R. Kelstrom*, 54 ECAB 570 (2003).

²¹ *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *James T. Johnson*, 39 ECAB 1252 (1988).

²² *B.B.*, Docket No. 19-1102 (issued November 7, 2019); *Beverly A. Spencer*, 55 ECAB 501 (2004).

²³ *A.G.*, Docket No. 20-1087 (issued December 31, 2020).

²⁴ See *L.G.*, Docket No. 20-0611 (issued February 16, 2021); see also *N.W.*, Docket No. 16-1890 (issued June 5, 2017).

OWCP's procedures dictate that, when an OWCP medical adviser, second opinion specialist, or impartial medical examiner renders a medical opinion based on a SOAF, which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.²⁵ The Board finds, as Dr. Mills based his report on an inaccurate SOAF, the probative value of his opinion is diminished.²⁶

Once OWCP undertook development of the record it was required to complete development of the record by procuring medical evidence that would resolve the relevant issue in the case.²⁷ As it did not request that Dr. Mills provide a supplemental opinion clarifying his opinion and based on an accurate SOAF, the Board finds that OWCP has not met its burden of proof in terminating appellant's wage-loss compensation and medical benefits based on his January 15, 2019 report.²⁸

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work for the period December 30, 2017 through April 20, 2018 due to her accepted November 4, 2005 employment injury. The Board also finds that OWCP has not met its burden of proof to terminate her entitlement to wage-loss compensation and medical benefits, effective May 18, 2019, as she no longer had residuals or disability causally related to her November 4, 2005 employment injury.

²⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); *see S.C.*, Docket No. 18-1011 (issued March 23, 2020).

²⁶ *See P.C.*, Docket No. 20-0935 (issued February 19, 2021).

²⁷ *See J.F.*, Docket No. 17-1716 (issued March 1, 2018).

²⁸ In light of the Board's disposition in issue 1, issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the December 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: May 26, 2021
Washington, DC

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

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

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