

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

N.A., Appellant)	
)	
and)	Docket No. 21-0542
)	Issued: November 8, 2021
U.S. POSTAL SERVICE, CHICAGO CESAR)	
CHAVEZ STATION, Chicago, IL, Employer)	
)	

Appearances:
Appellant, pro se
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 February 10, 2021 appellant filed a timely appeal from a January 20, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 20, 2021 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 wage-loss compensation and medical benefits, effective January 20, 2021, as she no longer had disability or residuals causally related to her accepted June 11, 2019 employment injury.

FACTUAL HISTORY

On June 11, 2019 appellant, then a 48-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on that date, while unloading parcels from the rear of her postal vehicle, a customer backed into her vehicle, causing it to strike both of her knees while in the performance of duty. She stopped work on June 11, 2019. On July 26, 2019 OWCP accepted the claim for bilateral knee contusions and bilateral hip strains. It paid appellant wage-loss compensation on the supplemental rolls as of July 26, 2019 and on the periodic rolls as of January 4, 2020.

In a development letter dated April 2, 2020, OWCP requested additional information from appellant's attending physician, Dr. Neeraj Jain, Board-certified in pain medicine, including an updated, signed medical report addressing the employment-related conditions claimed and providing medical reasoning for the opinions offered. It afforded 30 days for a response.

On June 4, 2020 Dr. Jain completed a form report, indicating that appellant could return to limited-duty work on June 16, 2020 with restrictions of lifting and carrying no more than 15 to 20 pounds and no bending. Appellant returned to four hours per day of light-duty work on June 27, 2020.

On October 13, 2020 appellant filed a claim for compensation (Form CA-7) requesting compensation for total disability beginning September 26, 2020.

In an October 20, 2020 development letter, OWCP informed appellant that her June 11, 2019 employment injuries included bilateral knee contusions and bilateral hip strains. It requested additional factual and medical evidence in support of her claimed recurrence of disability and provided her with a questionnaire for completion. OWCP afforded 30 days for a response.

On November 4, 2020 appellant completed the questionnaire and asserted that her current conditions and disability were related to her accepted June 11, 2019 employment injury as her pain had never stopped. She denied any additional injuries.

On October 23, 2020 OWCP referred appellant, a statement of accepted (SOAF), and a series of questions to Dr. Allan M. Brecher, a Board-certified orthopedic surgeon, for a second opinion evaluation.

On October 22, 2020 Dr. Jain completed a form report diagnosing work-related lumbar facet syndrome. He noted that appellant could return to light-duty work four hours a day on October 24, 2020. Dr. Jain provided restrictions of no lifting or carrying more than 15 to 20 pounds and a four-hour workday three times a week.

In an undated report, Dr. Jain noted appellant's history of injury on June 11, 2019 and her assertion that she experienced a jerking motion of her back and neck when the vehicle struck her knees. He found that she continued to experience low back pain aggravated by standing, sitting, and bending. Dr. Jain reviewed appellant's cervical magnetic resonance imaging (MRI) scan and found disc protrusions at C5-6 and C6-7. He also reviewed a lumbar MRI scan and found disc bulges from L3 through S1 with superimposed spondylolisthesis. Dr. Jain diagnosed lumbar facet syndrome and cervical facet syndrome. He provided work restrictions and opined that appellant's low back condition was a result of the original injury.

In a November 19, 2020 report, Dr. Brecher reviewed the SOAF, the medical records and described appellant's history of injury on June 11, 2019. On physical examination he found that she had some right groin pain, but painless full range of motion of the hips, knees, and cervical spine. Dr. Brecher opined that appellant had sprains and contusions to her hips and knees, and was currently neurologically intact, but reporting subjective complaints. He found that she had no residuals of the accepted employment injuries and did not require further treatment. Dr. Brecher found that appellant could return to work with no restrictions.

On December 16, 2020 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. Brecher's opinion that the June 11, 2019 accepted conditions had ceased without residuals or disability. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

On November 19, 2020 Dr. Jain opined that appellant could return to light-duty work on November 21, 2020 with no lifting or carrying more than 15 to 20 pounds. He further limited her to two hours of standing and walking and two hours of sitting, three times a week. In notes dated December 14 and 17, 2020, Dr. Jain advised that appellant could only perform light duty with restrictions of two hours standing and walking and two hours sitting working three times a week. He further opined that she was totally disabled intermittently from December 5 through 14, 2020.

Appellant also submitted a January 7, 2021 form report from Mohommed Meman, a physician assistant.

By decision dated January 20, 2021, OWCP terminated appellant's wage-loss compensation and medical benefits effective that date based on Dr. Brecher's opinion.

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.³ 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

³ 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).

the employment.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ 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.⁷

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁸ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.⁹

ANALYSIS

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 20, 2021.

Appellant's attending physician, Dr. Jain, opined that appellant was disabled from work and had ongoing residuals due to her accepted June 11, 2019 employment injuries. OWCP referred her for a second opinion evaluation with Dr. Brecher, who opined that she had no residuals of her June 11, 2019 employment injuries and could return to work without restrictions.

Dr. Jain noted appellant's history of injury on June 11, 2019 and her assertion that she experienced a jerking motion of her back and neck when the vehicle struck her knees. He found that she continued to experience low back pain aggravated by standing, sitting, and bending. Dr. Jain reviewed diagnostic studies diagnosed lumbar facet syndrome, and cervical facet syndrome. He provided work restrictions and opined that appellant's low back condition was a result of the original injury.

⁴ 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).

⁵ See *R.P., id.*; *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ See *R.P., id.*; *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009). *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁷ See *R.P., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

⁸ 5 U.S.C. § 8123(a); *G.F.*, 20-0497 (issued May 20, 2021); *B.S.*, Docket No. 19-0711 (issued October 17, 2019); *L.T.*, Docket No. 18-0797 (issued March 14, 2019); *Shirley L. Steib*, 46 ECAB 309, 317 (1994); see also *G.B.*, Docket No. 16-0996 (issued September 14, 2016) (where the Board held that OWCP improperly terminated the claimant's wage-loss compensation and medical benefits as there was an unresolved conflict of medical opinion between her treating physician and a second opinion specialist).

⁹ *S.S.*, Docket No. 19-1658 (issued November 12, 2020); *C.W.*, Docket No. 18-1536 (issued June 24, 2019).

In a November 19, 2020 report, Dr. Brecher noted that appellant was currently neurologically intact, but reporting subjective complaints. He opined that she had no residuals of the accepted employment injuries of bilateral knee contusions and bilateral hip strains and did not require further treatment. Dr. Brecher advised that appellant could return to work with no restrictions.

The Board finds that there is an unresolved conflict of medical evidence between the opinions of Drs. Jain and Brecher as to whether appellant continues to experience disability and medical residuals as a result of her June 11, 2019 employment injuries. Therefore, OWCP has not met its burden of proof to terminate her wage-loss compensation and medical benefits as it should have referred her for an impartial medical evaluation, pursuant to 5 U.S.C. § 8123(a), to resolve the conflict prior to a termination of wage-loss compensation and medical benefits.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 20, 2021.

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 8, 2021
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