United States Department of Labor
Employees' Compensation Appeals Board

B.C., Appellant	)	
and	)	**Docket No. 20-1618**
	)	**Issued: October, 8, 2021**
U.S. POSTAL SERVICE, HIGH POINT POST OFFICE, High Point, NC, Employer	)	

Appearances:
Joanne Wright, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On September 4, 2020 appellant, through his representative, filed a timely appeal from a July 9, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective May 16, 2019, as he no longer had residuals or

[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.*

disability causally related to his accepted employment injury; and (2) whether appellant has met his burden of proof to establish continuing employment-related disability or residuals on or after May 16, 2019 due to his accepted employment injury.

FACTUAL HISTORY

On November 15, 2013 appellant, then a 61-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 8, 2013 he broke his rib, fractured his upper jaw, lost teeth, and injured his back and neck when involved in a head-on motor vehicle accident (MVA) while in the performance of duty. He stopped work on November 8, 2013. OWCP accepted the claim for a broken tooth. It subsequently expanded acceptance of the claim to include an open wound of the lip without complications, an abrasion or friction burn of the left elbow, forearm, and wrist, without infection, an abrasion or friction burn of the left leg except the foot without infection, an abrasion or friction burn of the left fingers without infection, thoracic sprain, a closed fracture of a rib, and post-concussion syndrome. OWCP paid appellant wage-loss compensation for total disability on the supplemental rolls, effective December 28, 2013, and on the periodic rolls, effective January 12, 2014.

In a report dated January 29, 2014, Dr. Amit Hiralal Patel, a physiatrist, evaluated appellant for back and leg pain as a result of a November 8, 2013 MVA. He noted that, subsequent to the injury, appellant had "difficulty with attention and memory, gait difficulty associated with multiple falls, and occasional slurring of speech." Dr. Patel diagnosed neck, back, and shoulder pain.

A February 12, 2014 magnetic resonance imaging (MRI) scan of the lumbar spine revealed degenerative changes at multiple levels and severe central spinal stenosis at L3-4. A February 12, 2014 MRI scan of the thoracic spine was unremarkable. A cervical MRI scan of even date showed spinal and foraminal stenosis from C3 to C7.

On February 18, 2014 Dr. Benjamin R. Graves, a Board-certified orthopedic surgeon, discussed appellant's history of a head-on collision in November 2013 when a driver fell asleep and veered into his lane at a "high rate of speed, resulting in significant facial trauma and a significant head injury…."[3] H noted that his wife advised that he had been normal before the collision, but that subsequently had become "increasingly confused, has difficulty speaking, has gait abnormalities, and balance issues that cause him to fall frequently." Dr. Graves discussed appellant's complaints of shoulder pain and stiffness throughout his bilateral shoulders, elbow, wrists, fingers, hips, knees, and ankles. He related, "I would venture to say that this is somehow related to his gait disturbance, confusion, and personality change after the motor vehicle collision."

An MRI scan of the brain obtained on March 11, 2014 demonstrated no acute abnormality and nonspecific areas of high signal likely showing microvascular ischemic disease which appears advanced for age, with other etiologies including remote trauma/inflammation, demyelination, or chronic ischemia.

[3] In a February 10, 2014 report, Dr. Chason Hayes, a Board-certified orthopedic surgeon, diagnosed cervical and lumbar spondylosis aggravated by a MVA and left rotator cuff syndrome.

In an April 8, 2014 report, Dr. Herman Schmid, a physician specializing in family medicine, advised that he had treated appellant since 1996. He discussed his history of a severe MVA on November 8, 2013 and subsequent treatment at the emergency department for "multiple injuries including the loss of two teeth, fractured ribs, and damage to his cervical and lumbar spine." Dr. Schmid noted that appellant had an "ataxic gait secondary to progressive muscle weakness and poor muscle coordination since the accident." He opined that appellant was permanently disabled from all work due to the MVA.

On July 16, 2014 Dr. Paul Fredrick Meyer, Board-certified in family practice, discussed appellant's history of a November 2013 MVA and current complaints of stiffness, somnolence, personality change, ataxia, and problems walking. He diagnosed post-concussive syndrome, diabetes mellitus, hypertension, a traumatic brain injury, and post-traumatic stress disorder (PTSD).

On August 19, 2014 Dr. Meyer requested that OWCP expand the acceptance of appellant's claim to include a traumatic brain injury, PTSD, neck pain, hypertension, dysphonia, and diabetes. He advised that the diagnosed conditions were either caused or aggravated by the employment based on his examination and medical studies.

On June 10, 2015 Dr. Meyer opined that appellant's employment injury had aggravated or accelerated hypertension, chronic kidney disease, degenerative joint disease, and diabetes. He further found that he had sustained an acute injury to his brain and PTSD "as a consequence of the events of the collision and his injuries, and he has developed traumatic Parkinson's disease as a consequence of his injuries." Dr. Meyer advised that appellant required continued lifelong medical treatment as a result of the collision. He asserted that medical literature supported that traumatic head injuries could cause traumatic Parkinson's disease and PTSD and that he had based his conclusion on his examination of appellant and a review of treatment notes. Dr. Meyer further opined that medical literature supported that head and musculoskeletal injuries sustained in a collusion could activate or accelerated underlying hypertension and diabetes. He found that appellant was permanently disabled from employment and required continued treatment.

On June 17, 2015 OWCP referred appellant to Dr. Shervin Eshraghi, a Board-certified neurologist, for a second opinion examination. It requested that he address whether appellant had sustained a traumatic brain injury as a result of the accepted employment injury.

In a report dated July 1, 2015, Dr. Eshraghi discussed appellant's history of a November 8, 2013 head-on MVA. He found that the accepted conditions had resolved except for some symptoms of tenderness and stiffness in the thoracic region. Dr. Eshraghi asserted that appellant had sustained a traumatic brain injury as a result of his employment injury. He related:

> "His history is consistent with post-concussive syndrome. His neurologic exam[ination] and low score on cognitive testing is consistent with cognitive impairment, which may be seen after a traumatic brain injury as well. Furthermore, his neurological exam[ination] shows evidence of Parkinsonism. Although pugilistic Parkinsonism from repeated brain trauma is a well-known phenomenon, it is unusual for it to occur with one injury event. Nevertheless, it is within the realm of possibility."

Dr. Eshraghi related that appellant had significant disability both from the accident-related traumatic brain injury and from Parkinsonism that "may have potentially predated the accident." He opined that appellant was disabled from his usual employment.

On January 21, 2016 OWCP expanded the acceptance of appellant's claim to include post-concussion syndrome.

In a report dated April 6, 2016, Dr. Meyer opined that appellant had "developed traumatic Parkinson's disease as a consequence of his injuries." He further opined that he suffered a permanent aggravation or acceleration of hypertension, diabetes, chronic kidney disease, degenerative joint disease, and PTSD due to his employment injury. Dr. Meyer related that medical literature supported that traumatic head and musculoskeletal injuries caused an elevation of blood sugar levels and hypertension, and could lead to neurological and psychiatric conditions, including traumatic Parkinson's disease and PTSD. He advised that he had based his conclusion that appellant was permanently disabled from employment on his examination and review of the medical evidence.

In a note dated July 24, 2017, Dr. Meyer advised that appellant's condition had not changed and referenced his June 10, 2015 letter.[4] He indicated that he did not anticipate his condition improving.

On August 9, 2018 Dr. Miranda Jocelyn Turner, Board-certified in family medicine, indicated that appellant's condition remained unchanged.

On February 4, 2019 OWCP again referred appellant to Dr. Eshraghi for a second opinion examination regarding whether he had continued residuals and disability due to his accepted employment injury.

In a report dated February 18, 2019, Dr. Eshraghi determined that appellant's cognitive function had significantly worsened since his prior evaluation. On examination he found moderate-to-severe bradykinesia of the extremities and moderate rigidity. Dr. Eshraghi advised that testing showed low cognitive function and signs of moderate-to-severe Parkinsonism. He opined that the cognitive impairment and Parkinsonism were unrelated to the accepted employment injury. Dr. Eshraghi related:

> "Post-concussive syndrome improves with time and either stabilizes or totally resolves. [Appellant's] cognitive dysfunction has progressively gotten worse, which is not the pattern expected as part of a post-concussive syndrome. His history and examination are most consistent with probable Lewy body dementia and this cannot be caused by a traumatic brain injury. This condition is comprised of dementia and Parkinsonism within one year of onset of each other and is a

[4] In a progress report dated March 6, 2017, Dr. Meyer noted that appellant had a medical history that included a November 18, 2013 closed-head injury. He diagnosed essential hypertension, cervical stiffness, and PTSD. Dr. Meyer advised that appellant was on medication for Parkinson's disease.

progressive neurodegenerative condition as evidence by his history and examination. All the other accepted conditions have resolved."

Dr. Eshraghi found that appellant was totally disabled from his usual employment, but that his disability was "not a direct result of the accepted work-related conditions."

On March 27, 2019 OWCP notified appellant of its proposed termination of his compensation and medical benefits as the weight of the evidence established that he no longer had any employment-related residuals or disability due to his accepted November 8, 2013 employment injury. It afforded him 30 days to submit additional evidence or argument if he disagreed with the proposed termination.

By decision dated May 15, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective May 16, 2019. It found that Dr. Eshraghi's opinion represented the weight of the evidence and established that he had no further disability or residuals of his accepted employment injury.

Thereafter, OWCP received a December 3, 2018 report from Dr. John G. Malone, a Board-certified neurologist and neurophysiologist. Dr. Malone diagnosed Parkinsonism, a history of a traumatic brain injury, diabetes mellitus, proximal muscular weakness, dyslipidemia, chronic kidney disease, PTSD, muscular weakness, and memory loss.

In a report dated June 7, 2019, Dr. Malone advised that he had treated appellant since 2014 as a result of a November 2013 MVA. He diagnosed a traumatic brain injury, concussion, and post-concussion syndrome. Dr. Malone indicated that brain imaging obtained March 11, 2014 showed signal abnormalities that could be due to "remote trauma, microvascular ischemia, inflammation, or demyelination." He noted that appellant had Parkinson's disease, which could "certainly be caused or aggravated by severe closed-head injuries." Dr. Malone opined that appellant's 2013 traumatic brain injury at least partially caused his "ongoing demise and poor functional status."

On October 31, 2019 appellant requested reconsideration. He argued that Dr. Malone's June 7, 2019 report created a conflict in medical opinion.

By decision dated January 17, 2020, OWCP denied modification of its May 5, 2019 decision.

On April 2, 2020 Dr. Malone advised that appellant's 2013 traumatic brain injury was "felt to be causal, at least in part, to his progressive physical and mental decline associated with Parkinsonism."

On April 10, 2020 appellant requested reconsideration. He again argued that a conflict in medical opinion existed.

By decision dated July 9, 2020, OWCP denied modification of its January 17, 2020 decision. It further found that Dr. Malone's opinion was insufficient to show that appellant had sustained Parkinson's disease caused or aggravated by the accepted employment injury.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.[5] 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.[6] Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[7]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[8] To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.[9]

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.[10]

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits, effective May 16, 2019, as he no longer had residuals or disability causally related to his accepted employment injury.

The Board finds that OWCP has not resolved the issue of whether acceptance of appellant's claim should be expanded to include additional conditions and, thus, has not met its burden of proof to terminate his wage-loss compensation and medical benefits.[11]

In reports dated June 10, 2015 and April 6, 2016, Dr. Meyer found that, based on his examination findings, review of the evidence, and medical literature, appellant had developed traumatic Parkinson's disease as a result of the accepted employment injury. He further found that the MVA had aggravated or accelerated his hypertension, chronic kidney disease, degenerative joint disease, and diabetes and caused PTSD.

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[5] *R.H.*, Docket No. 19-1064 (issued October 9, 2020); *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

[6] *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

[7] *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

[8] *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

[9] *A.J.*, Docket No. 18-1230 (issued June 8, 20200); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

[10] 5 U.S.C. § 8123(a); *L.T.*, Docket No. 18-0797 (issued March 14, 2019); *Shirley L. Steib,* 46 ECAB 309, 317 (1994).

[11] *See T.M.*, Docket No. 19-1068 (issued March 30, 2021).

OWCP referred appellant to Dr. Eshraghi for an opinion regarding whether appellant had sustained a traumatic brain injury due to the accepted employment injury. In a report dated July 1, 2015, Dr. Eshraghi diagnosed post-concussive syndrome and noted that his scores on cognitive testing showed an impairment consistent with a traumatic brain injury. He advised that a neurological examination showed Parkinsonism. Dr. Eshraghi indicated that it was unusual, but possible, for pugilistic Parkinson disease to develop from one event.

After receipt of Dr. Eshraghi's July 1, 2015 report, OWCP accepted post-concussive syndrome, but did not determine whether it should expand acceptance of his claim to include a traumatic brain injury or Parkinsonism as due to the accepted employment injury.[12]

On February 4, 2019 OWCP again referred appellant to Dr. Eshraghi. In a February 18, 2019 report, Dr. Eshraghi opined that appellant's Parkinsonism and cognitive impairment were unrelated to the accepted employment injury. He diagnosed probable Lewy body dementia unrelated to appellant's traumatic brain injury and post-concussive syndrome. Dr. Eshraghi explained that post-concussive syndrome stabilized or improved with time while appellant's condition had worsened. He concluded that appellant's disability was not a direct result of his accepted employment injury.

Once OWCP undertakes development of the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.[13] The Board finds that a conflict exists between Dr. Meyer, appellant's physician, and Dr. Eshraghi, an OWCP referral physician, regarding whether he sustained Parkinson's disease causally related to the accepted employment injury. Prior to its termination decision, OWCP failed to fully develop the issue of claim expansion to determine whether it should expand acceptance of the claim to include additional conditions diagnosed by Dr. Meyer. It further failed to resolve the conflict in medical opinion between Dr. Meyer and Dr. Eshraghi regarding whether his claim should be expanded to include Parkinson's disease and whether, if established, the additional conditions resulted in continuing disability from employment or the need for medical treatment.[14]

For the above-stated reasons, OWCP has not resolved the issue of whether the acceptance of appellant's claim should be expanded to include additional conditions and, thus, it has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.[15]

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[12] The Board notes that the International Classification of Diseases (ICD)-10 code for post-concussion syndrome is different from the code for a traumatic brain injury.

[13] *See B.W.*, Docket No. 20-1033 (issued November 30, 2020); *R.B.* Docket No. 20-0109 (issued June 25, 2020).

[14] *B.W.*, *id.*; *J.T.*, Docket No. 19-1723 (issued August 24, 2020).

[15] *T.M.*, *supra* note 11.

CONCLUSION

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits, effective May 16, 2019, as he no longer had residuals or disability causally related to his accepted employment injury.[16]

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October, 8, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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[16] In view of the Board's disposition of Issue 1, Issue 2 is moot.