

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

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**B.T., Appellant** )

and )

**U.S. POSTAL SERVICE, BLACKWOOD POST** )  
**OFFICE, Blackwood, NJ, Employer** )  
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**Docket No. 21-0388**  
**Issued: October 14, 2021**

*Appearances:*

*Andrew Douglas, 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 January 25, 2021 appellant, through counsel, filed a timely appeal from a December 29, 2020 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.

**ISSUES**

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's entitlement to wage-loss compensation and medical benefits, effective July 11, 2020; (2) whether

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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.*

appellant has met her burden of proof to establish continuing disability and residuals on or after July 11, 2020 causally related to the December 7, 2017 employment injury; and (3) whether appellant has met her burden of proof to establish expansion of the acceptance of her claim to include left de Quervain's tendinitis, an aggravation of scapholunate arthritis, and radial sensory neuropathy causally related to the accepted December 7, 2017 employment injury.

### **FACTUAL HISTORY**

On December 7, 2017 appellant, then a 60-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day, she strained her left wrist when lifting a parcel while in the performance of duty. She stopped work on December 7, 2017. OWCP assigned File No. xxxxxx166.<sup>3</sup>

In reports from December 7, 2017 through February 26, 2018, Dr. Daniel Altman, a Board-certified internist, diagnosed a nondisplaced fracture of the left radial styloid process after appellant lifted a 30-pound parcel while at work.

In a January 12, 2018 report, Dr. John M. Bednar, a Board-certified orthopedist, diagnosed a healing left radial styloid fracture. He prescribed a splint and physical therapy. In February 2, 2018 follow-up reports, Dr. Bednar diagnosed a healed left distal radial fracture. He returned appellant to limited-duty work.

On April 13, 2018 Dr. Daniel J. Ragone, Jr., a Board-certified physiatrist, performed an electromyography and nerve conduction velocity (EMG/NCV) study of the left wrist, which demonstrated left median nerve neuropathy consistent with mild chronic carpal tunnel syndrome, and a mild neuropathy of the radial sensory nerve at the wrist.

In reports dated from January 12 through July 13, 2018, Dr. Bednar diagnosed traumatic neuropathy of the medial and radial sensory nerves at the left wrist caused by the accepted left radial styloid fracture. He opined that appellant had attained maximum medical improvement (MMI) as the injury was not amendable to surgical decompression. Dr. Bednar discharged appellant from care on July 13, 2018.

On August 6, 2018 OWCP accepted the claim for a healed left distal radial styloid fracture. By decision dated February 14, 2018, it initially denied the claim as the medical evidence of record was insufficient to establish causal relationship between a diagnosed medical condition and the accepted employment incident. Following a review of the written record by a representative of OWCP's Branch of Hearings and Review, by decision dated July 20, 2018, an OWCP hearing representative reversed OWCP's February 14, 2018 decision and returned the case to OWCP for acceptance of a healed left radial styloid fracture.

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<sup>3</sup> Prior to the present claim, under OWCP File No. xxxxxx931, OWCP accepted that appellant sustained a left hand contusion, left wrist sprain, and left hand joint derangement on February 24, 2009 when she fell to the ground when delivering a parcel while in the performance of duty. On April 21, 2009 appellant underwent OWCP-authorized arthroscopy and internal fixation of the left wrist to address a scapholunate ligament tear. On February 8, 2012 under OWCP granted her a schedule a ward for seven percent permanent impairment of the left upper extremity for loss of range of motion of the left wrist.

OWCP paid appellant wage-loss compensation on the supplemental rolls commencing February 3, 2018.

On January 25, 2019 Dr. Ragone performed an EMG/NCV study of the left upper extremity, which demonstrated a moderate left radial sensory neuropathy at the wrist, no median or ulnar neuropathy at the left wrist, and mild chronic C6 cervical radiculitis.

In a January 25, 2019 report, Dr. Bednar diagnosed traumatic neuropathy of the radial sensory nerve at the left wrist, a healed fracture of the left radial styloid, and cervical radiculopathy.

On July 25, 2019 OWCP referred appellant, a statement of accepted facts (SOAF), and a series of questions to Dr. Stanley Askin, a Board-certified orthopedic surgeon, for a second opinion evaluation. In his August 23, 2019 report, Dr. Askin noted that the May 9, 2019 SOAF did not mention the accepted February 2009 injury, but that appellant had discussed it. On examination, he found negative Phalen's and Tinel's tests at the left wrist. Dr. Askin opined that there were no objective findings of the accepted left radial styloid fracture and questioned whether appellant had sustained such a fracture. He noted the presence of left median and mild radial sensory neuropathy based on the April 13, 2018 EMG study and chronic C6 radiculitis based on the January 25, 2019 EMG study. Dr. Askin returned appellant to full duty as she had no disability related to the accepted employment injury.

In an October 22, 2019 letter, OWCP requested that Dr. Askin provide a supplemental report explaining his diagnosis of chronic C6 radiculitis. In response, Dr. Askin submitted an October 23, 2019 report opining that electrodiagnostic studies were inherently subjective and open to multiple, inconsistent interpretations. He attributed appellant's left wrist symptoms to "skeletal imperfection or pathology" caused by the February 24, 2009 and December 7, 2017 employment injuries.

On November 22, 2019 OWCP administratively combined OWCP File No. xxxxxx166 with OWCP File No. xxxxxx931 and designated the latter claim as the master file number.

In a November 22, 2019 letter, OWCP requested that Dr. Askin submit an addendum report based on a new SOAF with information about the left wrist injury accepted under OWCP File No. xxxxxx931. It requested that Dr. Askin address whether the median nerve and sensory neuropathy demonstrated by electrodiagnostic studies was caused or aggravated by either the February 24, 2009 left wrist fracture accepted under OWCP File No. xxxxxx931 or the December 7, 2017 left wrist fracture accepted under OWCP File No. xxxxxx166.

In response, Dr. Askin submitted a January 13, 2020 report in which he contended that electrodiagnostic studies were "clearly subjective as performed by human beings" which could lead to inconsistent findings. He opined that appellant "did not sustain a median neuropathy or radial neuropathy as a consequence of her reported work-related injury." Dr. Askin returned appellant to full-duty work in her date-of-injury position.

In a development letter dated February 10, 2020, OWCP requested that appellant submit additional medical evidence addressing any causal relationship between left median nerve and radial sensory neuropathy and the December 7, 2017 employment injury. It provided a

questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence.

In response, appellant submitted a completed questionnaire dated February 19, 2020. She noted that, after OWCP's approved 2009 left wrist surgery, she experienced clicking in her left wrist with occasional burning, numbness, and weakness. Following the accepted 2017 left wrist fracture, these symptoms "increased in severity and consistency," with burning and numbness in the left wrist and fingers.

Appellant also provided a February 14, 2020 report by Dr. Andrew J. Miller, an orthopedic surgeon specializing in hand surgery. Dr. Miller summarized a history of injury and treatment. On examination of the left upper extremity, he observed a positive Finkelstein's maneuver and a negative Tinel's test. Dr. Miller diagnosed radial sensory neuritis and de Quervain's tenosynovitis at the left wrist. He administered a cortisone injection to the first dorsal compartment, which appellant tolerated well.

In a March 26, 2020 letter, OWCP requested that Dr. Askin prepare a supplemental report based on his review of Dr. Miller's February 14, 2020 report and appellant's completed questionnaire. In response, Dr. Askin submitted a March 27, 2020 report reviewing appellant's completed questionnaire and Dr. Miller's report. He opined that appellant did not have de Quervain's tendinitis as Dr. Miller did not indicate that the first dorsal compartment injection immediately relieved her symptoms. Dr. Askin reiterated that appellant had no work-related residuals or disability.

By decision dated April 23, 2020, OWCP denied expansion of the acceptance of the claim to include consequential left median neuropathy and left radial sensory neuropathy causally related to the accepted left radial styloid fracture.

By notice dated April 28, 2020, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Askin's opinion that the accepted injuries had ceased without residuals or disability. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

In response, appellant, through counsel, submitted a May 27, 2020 statement contending that Dr. Askin's opinion was insufficiently rationalized to represent the weight of the medical evidence. Counsel asserted that Dr. Miller's report established that appellant continued to suffer from disabling injury-related residuals and that the acceptance of the claim should be expanded to include left de Quervain's tenosynovitis and left median and sensory neuropathies. He submitted additional medical evidence.

In a March 12, 2020 report, Dr. Miller noted that the first dorsal compartment injection temporarily improved appellant's symptoms, but that she had continued pain over the radial styloid and the dorsal and volar aspects of the left wrist. On examination, he found limited extension and flexion of the left wrist, a positive Finkelstein's maneuver, minimal pain at the carpometacarpal joint, and pain to palpation over the dorsal wrist and radial styloid. Dr. Miller obtained left wrist x-rays demonstrating scapholunate advanced collapse (SLAC) arthritis at the level of the

radioscaphoid joint. He diagnosed left de Quervain's tenosynovitis and SLAC stage II arthritis. Dr. Miller administered a left radiocarpal joint injection.

In a May 16, 2020 report, Dr. Miller provided a detailed history of injury and treatment and reviewed medical records. He concurred with Dr. Bednar's opinion that the diagnosed radial sensory and median nerve neuropathies were likely related to the accepted left radial styloid fracture and left wrist contusion. Dr. Miller opined that his findings on physical examination were consistent with left radial sensory neuritis and left de Quervain's tenosynovitis. He explained that the acute trauma of the accepted left wrist fracture caused radial neuritis and materially worsened preexisting arthritis, tendinitis, and sensory neuropathy. Dr. Miller noted that EMG testing had moderate diagnostic sensitivity for cervical radiculopathy, meaning that a negative result did not rule out the presence of disease, but that the April 13, 2018 and January 25, 2019 EMG studies clearly evidenced radial sensory neuropathy. He disagreed with Dr. Askin that appellant's lack of immediate response to the first dorsal compartment injection ruled out de Quervain's tenosynovitis, noting that injections were at times ineffective for multi-compartment disease. Dr. Miller noted work restrictions against loading and lifting heavy objects.

On June 9, 2020 OWCP requested that Dr. Askin review Dr. Miller's March 12 and May 16, 2020 reports and indicate whether they altered his prior opinion. Dr. Askin submitted a June 10, 2020 supplemental report asserting that Dr. Miller's report was inadequately rationalized and that orthopedic hand surgeons were known to perform procedures of questionable efficacy. He reiterated that appellant did not sustain any work-related condition other than the accepted left distal radius fracture.

By decision dated July 10, 2020, OWCP terminated appellant's wage-loss compensation and medical benefits effective July 11, 2020 based on Dr. Askin's second opinion.

By decision of even date, OWCP denied expansion of the acceptance of appellant's claim to include consequential de Quervain's tenosynovitis, and scapholunate arthritis.

On September 30, 2020 appellant, through counsel, requested reconsideration. He contended that Dr. Askin's reports were based on an incomplete medical history and lacked adequate medical rationale. Alternatively, counsel asserted that there was a conflict of medical opinion evidence on the issues of termination and expansion between Dr. Askin, for the government, and Dr. Miller, for appellant, requiring resolution by an impartial medical specialist. Counsel submitted additional evidence.

In a July 21, 2020 report, Dr. Miller opined that de Quervain's tenosynovitis was causally related to the radial styloid fracture, as sequelae from fractures in that anatomic region were linked to the development of tendinitis. He also opined that the accepted employment injury may have exacerbated SLAC arthritis.

In an August 18, 2020 report, Dr. Miller diagnosed left de Quervain's tenosynovitis with neurosensory neuritis, and left SLAC arthritis stage II.

By decision dated December 29, 2020, OWCP denied modification of its July 10, 2020 decisions.

## 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>4</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>5</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

## ANALYSIS -- ISSUE 1

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 11, 2020.

The evidence of record establishes that a conflict in medical opinion evidence exists between Dr. Askin, the second opinion physician, and Dr. Miller, appellant's treating physician, as to whether appellant had residuals from her accepted left wrist sprain, left hand joint

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<sup>4</sup> See *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *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>5</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>6</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>7</sup> *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

<sup>8</sup> *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

<sup>9</sup> 5 U.S.C. § 8123(a); *G.F.*, Docket No. 20-0497 (issued May 20, 2021); *M.T.*, Docket No. 20-0677 (issued December 2020); *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).

<sup>10</sup> *G.F.*, *id.*; *S.S.*, Docket No. 19-1658 (issued November 12, 2020); *C.W.*, Docket No. 18-1536 (issued June 24, 2019).

derangement, and left distal radial styloid fracture. In his August 23 and October 23, 2019, and March 27, 2020 reports, Dr. Askin noted reviewing the SOAF and medical records. He opined that EMG studies were not a reliable diagnostic method as they were influenced by human subjectivity. Dr. Askin found, based on his examination, that there were no objective findings to support ongoing residuals from appellant's accepted left wrist injuries. He determined that appellant could return to her date-of-injury position with no restrictions.

Appellant's treating physician, Dr. Miller, however, submitted reports through May 16, 2020, wherein he noted that he continued to treat appellant for de Quervain's tenosynovitis, radial sensory neuritis, and SLAC arthritis of the left wrist. He opined that these conditions were sequelae of the accepted February 24, 2009 and December 7, 2017 left wrist injuries. Dr. Miller also explained that the April 13, 2018 and January 25, 2019 EMG studies performed by Dr. Ragone consistently demonstrated neuropathy of the radial sensory nerve at the left wrist that continued to be present on physical examination. He restricted appellant from lifting or loading heavy objects at work.

The Board finds that there is an unresolved conflict of medical evidence between the opinions of Dr. Askin, an OWCP referral physician, and Dr. Miller, appellant's treating physician, as to whether appellant had residuals and disability from the accepted left wrist sprain, left hand joint derangement, and left distal radial styloid fracture.<sup>11</sup> As there is a conflict in the medical opinion evidence prior to July 11, 2020 as to whether appellant's accepted conditions had resolved, the Board finds that OWCP has not met its burden of proof to terminate her wage-loss compensation and medical benefits.<sup>12</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

Where an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>13</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>14</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment injury must be based on a complete factual and medical background.<sup>15</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale,

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<sup>11</sup> *G.F., id.; S.S., id.; C.W., id.*

<sup>12</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

<sup>13</sup> *D.H.*, Docket No. 19-0687 (issued March 21, 2021); *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>14</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>15</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.<sup>16</sup>

### ANALYSIS -- ISSUE 3

The Board finds that this case is not in posture for decision as a conflict of medical opinion evidence has been created regarding whether the additional left wrist conditions are work related.

Appellant requested that OWCP accept additional left wrist conditions including de Quervain's tenosynovitis, radial sensory neuritis, and an aggravation of SLAC arthritis.

Dr. Askin opined in a January 13, 2020 report that the accepted left wrist injuries did not cause median or radial neuropathy. He questioned Dr. Miller's diagnosis of de Quervain's tendinitis and indicated that orthopedic hand surgeons performed ineffective procedures.

Dr. Bednar treated appellant beginning on January 12, 2018. In reports from April 20, 2018 through January 25, 2019, Dr. Bednar diagnosed traumatic medial and radial sensory neuropathy at the left wrist caused by the accepted December 7, 2017 left radial styloid fracture. Dr. Miller opined in reports from March 12 through July 21, 2020 that based on physical findings on examination and consistent EMG study results, the accepted left radial styloid fracture was competent to cause de Quervain's tenosynovitis, SLAC arthritis at the level of the radioscaphoid, and left radial sensory neuritis. He specified in his July 21, 2020 report that de Quervain's tenosynovitis was a known sequela of radial styloid fracture as fractures in that region of the wrist were associated with the development of tendinitis.

Dr. Askin, Dr. Bednar, and Dr. Miller, described the accepted left wrist injuries and provided rationale for their respective findings based on their review of the medical evidence and findings on examination. The Board, therefore, finds a conflict in medical opinion regarding whether appellant sustained de Quervain's tenosynovitis, radial sensory neuritis, and an aggravation of SLAC arthritis causally related to or as a consequence of her February 24, 2009 and December 7, 2017 employment injuries.<sup>17</sup> Under section 8123(a) of FECA, OWCP must resolve this conflict by referring appellant, together with the case record and an SOAF, to an impartial medical specialist.<sup>18</sup>

On remand OWCP shall refer appellant, along with the case file and an updated SOAF, to an appropriate specialist for an impartial medical evaluation and a report including a rationalized opinion as to whether appellant's diagnosed left de Quervain's tendinitis, aggravation of scapholunate arthritis, and radial sensory neuropathy are causally related to the accepted July 11, 2020 employment injury. Following this and other such development as OWCP deems necessary,

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<sup>16</sup> *Id.*

<sup>17</sup> *See D.B.*, Docket No. 20-1142 (issued December 31, 2020).

<sup>18</sup> *Supra* note 12; *D.H.*, *supra* note 13; *see T.T.*, Docket No. 19-0544 (issued August 14, 2020).



it shall issue a *de novo* decision regarding her request to expand acceptance of the claim to include additional employment-related left wrist conditions.

**CONCLUSION**

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 11, 2020. The Board further finds that the case is not in posture for decision regarding whether appellant has met her burden of proof to expand acceptance of her claim to include left de Quervain's tendinitis, an aggravation of scapholunate arthritis, and radial sensory neuropathy causally related to the accepted February 24, 2009 and July 11, 2020 employment injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 29, 2020 decision of the Office of Workers' Compensation Programs is reversed in part regarding termination of appellant's wage-loss compensation and medical benefits, and set aside in part regarding expansion of the claim. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 14, 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