

ISSUE

The issue is whether OWCP met its burden of proof to find that the accepted conditions of right ribcage trauma/contusion, and internal derangement of the right wrist, right ankle, right hip, and lumbar spine had resolved as of February 8, 2021.

FACTUAL HISTORY

On April 10, 2020 appellant, then a 30-year-old medical clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 9, 2020 she slipped stepping out of an elevator while in the performance of duty. She advised that she had reinjured her right shoulder, wrist/hand, and ankle and also injured her right hip and ribs. Appellant stopped work on April 9, 2020. OWCP assigned OWCP File No. xxxxxx218.³

In a development letter dated April 14, 2020, OWCP requested that appellant submit additional factual and medical evidence in support of her claim, including a report from her physician explaining how the described work incident caused or aggravated a medical condition. It provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested information.

On April 15, 2020 Dr. Howard I. Baum, a Board-certified orthopedic surgeon, evaluated appellant for pain in her right shoulder, right wrist, right ankle, right hip, and cervical spine. He noted that she had a history of a slip and fall at work on April 9, 2020 and had previously fractured her right wrist in 2019. Dr. Baum diagnosed internal derangement of the right shoulder, wrist, and ankle, right hip distortion, and internal derangement of the cervical spine. He opined that appellant was unable to work.

An April 17, 2020 magnetic resonance imaging (MRI) scan of the right wrist demonstrated a triangular fibrocartilage complex (TFCC) tear. An MRI scan of the right shoulder of the same date demonstrated supraspinatus and subscapularis tendinosis, hypertrophy of the acromioclavicular (AC) joint, thickening of the coracohumeral ligament consistent with adhesive capsulitis or a rotator interval injury, and new edema in the anterior fibers of the deltoid compatible with a grade 1 muscle tear.

An MRI scan of the right ankle, obtained on April 22, 2022 demonstrated a severe bone contusion at the distal tip of the lateral malleolus, peroneal tenosynovitis, joint effusion, and a partial thickness tear of the deep fibers of the deltoid ligament.

In a statement dated April 25, 2020, appellant described her work injury on April 9, 2020 and noted that she had previously injured her right shoulder, right wrist/hand, right ankle, back, and knees in September 2019. She indicated that she had “multiple herniated discs[s]” in her neck and back and a cast on her right hand.

³ OWCP previously accepted that appellant sustained sprains of the right wrist, right ankle, both knees, and cervical, lumbar, and thoracic spine on September 10, 2019 to which it assigned OWCP File No. xxxxxx177. It paid her wage-loss compensation for disability for the period October 28, 2019 to February 26, 2021.

By decision dated May 26, 2020, OWCP denied appellant's traumatic injury claim. It found that she had not established a medical condition causally related to the accepted April 9, 2020 employment incident.

On June 5, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Subsequently, OWCP received a progress report dated May 26, 2020 from Dr. Baum, who discussed appellant's history of a fall at work on April 9, 2020 and of a wrist fracture in 2019. Dr. Baum diagnosed internal derangement of the right shoulder, wrist, ankle and hip, and cervical and central spine derangement. In a report of the same date, he diagnosed right knee internal derangement and a TFCC tear of the right wrist.

An MRI scan of the cervical spine performed on June 3, 2020 demonstrated a more prominent disc bulge with increased anterior thecal sac impingement at C4-5, a new central disc herniation with an annular tear with increased anterior sac impingement at C5-6, and a stable disc bulge with impingement at C6-7.

On June 3, 2020 Dr. Baum advised that the April 22, 2020 MRI scan of the right ankle was "consistent with a post-traumatic intraosseous fracture" due to appellant's April 9, 2020 fall. He further found that the MRI scan of the right shoulder demonstrated "new bone marrow edema and muscle tearing" and a new bone contusion of the right wrist due to her April 9, 2020 injury. Dr. Baum further recommended MRI scans of the neck and back and noted that appellant might have a problem at C5-6.

In July 1 and 29, 2020 progress reports, Dr. Baum diagnosed cervical and lumbar derangement.⁴

A telephonic hearing was held on August 17, 2020. Counsel noted that appellant had previously sustained an employment injury on September 10, 2019 assigned OWCP File No. xxxxxx177, and that imaging studies had established additional conditions due to the April 9, 2020 work injury.

Subsequently, OWCP received an unsigned initial evaluation dated June 8, 2020 from Dr. Shouhei Yamagami, an osteopath Board-certified in physical medicine and rehabilitation. Dr. Yamagami obtained a history of appellant slipping at work on April 9, 2020 and falling on her right side. He noted that she had a history of a prior injury on September 10, 2019 and was working part time with restrictions at the time of the April 9, 2020 incident. Dr. Yamagami diagnosed status post an employment-related slip and fall causing multiple injuries, cervical sprain/strain, cervical disc bulges from C4 to C7 with right C5 radiculopathy, thoracic sprain/strain, lumbar sprain/strain, a disc bulge at L5-S1 abutting the bilateral S1 nerve roots, right shoulder sprain/strain, and right ankle sprain/strain. He opined that appellant was totally disabled due to her injuries.

⁴ In an August 26, 2020 progress report, Dr. Baum diagnosed cervical and lumbar internal derangement and right shoulder derangement.

In a statement received by OWCP on September 17, 2020 appellant related that on September 10, 2019 she had fallen on stairs at work, injuring her head, upper and lower back, right wrist and ankle, and bilateral knees. She advised that she subsequently returned to four hours of modified work. On April 9, 2020 appellant related that she had fallen getting off the elevator on a floor that had been buffed and waxed.

By decision dated October 30, 2020, OWCP's hearing representative set aside the May 26, 2020 decision. He found that the June 3, 2020 report from Dr. Baum and June 8, 2020 report from Dr. Yamagami, were sufficient to warrant further development of the claim. The hearing representative noted that Dr. Baum had diagnosed right wrist and shoulder conditions and a possible injury at C5-6. He further advised that Dr. Yamagami had provided multiple employment-related diagnoses, including cervical sprain/strain and disc bulges from C4 to C7 with right radiculopathy as demonstrated by electrodiagnostic testing. The hearing representative instructed OWCP to obtain a copy of the electrodiagnostic testing, administratively combine the current file number with OWCP File No. xxxxxx177, prepare a statement of accepted facts (SOAF), and refer appellant for a second opinion physician to determine whether she had sustained a medical condition causally related to the accepted April 9, 2020 employment incident.

Thereafter, OWCP received electrodiagnostic studies dated July 9, 2020 showing right C5-6 radiculopathies and dated July 23, 2020 showing right S1 radiculopathy.⁵

On February 8, 2021 OWCP referred appellant to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion examination regarding whether she had sustained a medical condition causally related to the accepted April 9, 2020 employment incident. It provided him with a SOAF describing the September 10, 2019 and April 9, 2020 employment injuries, a series of questions, and noted that she had resumed modified work for four hours per day on November 11, 2019.

In a report dated February 8, 2021, Dr. Sultan discussed appellant's history of injuries occurring on September 10, 2019 and April 9, 2020, and provided his review of the medical reports of record. He noted that she currently experienced soreness in her right shoulder, right ribcage, right hip, right wrist pain, right ankle pain with walking, and intermittent low back pain. On examination Dr. Sultan found no swelling or atrophy of the right wrist or hand, strong grip strength, and normal sensation. For the right ribcage, he found no impairment in inspiration and expiration and negative anterior posterior and lateral compression tests. Dr. Sultan further found normal range of motion of the right hip and ankle with no complaints on palpitation and normal thoracolumbar findings. He diagnosed "soft tissue trauma to the right shoulder, right ribcage, right wrist, thoracolumbar spine, right hip and right ankle with residuals low grade right shoulder post-traumatic and postoperative adhesive capsulitis." Dr. Sultan attributed the conditions to appellant's slip and fall exiting the elevator on April 9, 2020. He related that she had "essentially recovered" from her September 10, 2019 work injury, but that the April 9, 2020 employment incident had resulted in new injuries. Dr. Sultan opined that appellant's right ribcage, right wrist, mid and lower back, right hip, and right ankle conditions had resolved, but that she still had

⁵ Appellant continued to submit progress reports from Dr. Baum.

residuals of her right shoulder injury. He advised that she could perform limited-duty employment and that her current restrictions arose due to her April 9, 2020 employment incident.

On February 22, 2021 OWCP advised appellant that it had accepted her claim for resolved internal derangement of the right wrist, ankle, and hip, resolved right ribcage trauma/contusion, resolved internal derangement of the lumbar spine. It determined that the date of resolution for the above-listed conditions was February 8, 2021, the date of Dr. Sultan's report. OWCP further accepted that appellant sustained internal derangement of the right shoulder.

On March 3, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review on the February 22, 2021 decision.

In a report dated March 10, 2021, Dr. Yamagami reviewed appellant's history of injuries on September 10, 2019 and April 9, 2020. He noted that she continued to have bilateral knee pain. Dr. Yamagami diagnosed multiple injuries after a September 10, 2019 slip and fall at work, bilateral knee chondromalacia, sprain/strain and internal derangement of the cervical, thoracic, and lumbar spine, right C5 radiculopathy now under another case, a right wrist sprain/strain and TFCC tear as part of the second case, and right ankle sprain/strain and a bone contusion as part of the second case. He opined that appellant was totally disabled due to her injuries.

On April 21, 2021 Dr. Baum diagnosed derangement of the right shoulder and cervical and lumbar spine. He questioned whether appellant could perform light-duty work.

In an April 22, 2021 report, Dr. Yamagami provided examination findings and again found that appellant had sustained multiple injuries on April 9, 2020. He diagnosed an exacerbation of preexisting myofascial derangement of the cervical spine with increased anterior thecal sac impingement and a worsening C4-5 disc bulge, a new disc herniation, an annular tear at C5-6, an exacerbation of preexisting right C5 radiculopathy, myofascial derangement of the thoracolumbar spine with a stable disc bulge at L5-S1 abutting the bilateral S1 nerve roots and straightening the lumbar lordosis indicating muscle spasm, an exacerbation of a previously injury to the right shoulder with supraspinatus and subscapularis tendinosis, hypertrophy of the AC joint, and new edema in the anterior fibers of the deltoid after arthroscopy surgery, an exacerbation of a prior injury to the right wrist with a new bone contusion, persistent marrow edema of the trapezium, and a TFCC tear, an exacerbation of a prior right ankle injury with a severe bone contusion of the distal lateral malleolus, peroneus synovitis, and a partial-thickness tear of the deltoid ligament, a right rib contusion, post-traumatic exacerbations of migraines, right medial epicondylitis due to decompensation, and right leg pain likely due to radiculopathy. Dr. Yamagami recommended continued physical therapy and continued to opine that appellant remained totally disabled due to her injuries. He noted that she had undergone an independent examination and that the physician found that she had reached maximum medical improvement in all areas, but the right shoulder and could resume work without restrictions. Dr. Yamagami noted his disagreement with this finding, and opined that appellant was "still totally disabled, and the orthopedic specialist is also in agreement with this."

On May 5, 2021 Dr. Jack Choueka, a Board-certified orthopedic surgeon, diagnosed a chronic right TFCC injury and recommended surgery.

A telephonic hearing was held on June 11, 2021. Counsel noted that her physician had requested authorization for a right wrist arthroscopy. He challenged the finding that the accepted conditions had resolved and requested that acceptance of the claim be expanded to include injuries to the cervical spine. Counsel maintained that Dr. Sultan had not adequately addressed the issue of appellant's cervical condition. He further asserted that acceptance of the claim should be updated to include an acute TFCC injury that had not yet resolved.

In a report of work status (Form CA-3), the employing establishment indicated that appellant had returned to full-time work with restrictions on July 6, 2021.

By decision dated August 24, 2021, OWCP's hearing representative affirmed the February 22, 2021 decision. The hearing representative found that the evidence was insufficient to establish that, except for her right shoulder, appellant had continuing medical conditions.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁶ 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.⁷ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁹ 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.¹⁰

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.¹¹

ANALYSIS

The Board finds that OWCP has not met its burden of proof to find that the accepted conditions of right ribcage trauma/contusion and internal derangement of the right wrist, right ankle, right hip, and lumbar spine had resolved as of February 8, 2021.

⁶ *R.H.*, Docket No. 19-1064 (issued October 9, 2020); *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

⁷ *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁸ *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

⁹ *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

¹⁰ *A.J.*, Docket No. 18-1230 (issued June 8, 2020); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

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

In a report dated February 8, 2021, Dr. Sultan, an OWCP referral physician, reviewed appellant's complaints of pain in her right wrist, right ankle, right shoulder, right ribcage, right hip, and low back. He noted that she had sustained employment injuries on September 10, 2019 and April 9, 2020. Dr. Sultan opined that appellant had recovered from her September 10, 2019 work injury. He found that she had sustained soft tissue trauma of the right shoulder, right ribcage, right wrist, thoracolumbar spine, right hip, right ankle, and right shoulder post-traumatic and postoperative adhesive capsulitis due to her April 9, 2020 employment injury. Dr. Sultan concluded that appellant's right ribcage, right wrist, mid and lower back, right hip, and right ankle conditions had resolved, but that she had residuals of her right shoulder injury. He opined that she could return to modified employment.

On April 22, 2021 Dr. Yamagami indicated that appellant had sustained multiple injuries on April 9, 2020. He diagnosed myofascial derangement of the thoracolumbar spine with a disc bulge at L5-S1 abutting the bilateral S1 nerve roots, an exacerbation of a previously injury to the right shoulder with supraspinatus and subscapularis tendinosis, hypertrophy of the AC joint, a bone contusion and TFCC tear of the right wrist, a right ankle bone contusion peroneus synovitis, and a partial-thickness tear of the deltoid ligament, and a right rib contusion. Dr. Yamagami disagreed with Dr. Sultan's finding that appellant had reached MMI except for her right shoulder. He further found that she was totally disabled.

Appellant's treating physician and OWCP's second opinion physician disagreed regarding whether her accepted right ribcage, right wrist, mid and lower back, right hip, and right ankle conditions had resolved such that she required no further medical treatment. Consequently, the Board finds that a conflict in medical opinion exists regarding this issue.¹² OWCP should have resolved the conflict in medical opinion by referring appellant to a third physician serving as an impartial medical specialist.¹³ As it failed to resolve the conflict in medical opinion evidence, the Board finds that OWCP has not met its burden of proof to establish that she had no further employment-related residuals of her right ribcage trauma/contusion and internal derangement of the right wrist, right ankle, right hip, and lumbar spine effective February 8, 2021.

On appeal counsel asserts that the evidence supported that appellant sustained cervical conditions as a result of the accepted employment injury. OWCP, however, has not issued a final decision on this issue. As discussed, the Board's jurisdiction is limited to review of final adverse decisions issued by OWCP.¹⁴

CONCLUSION

The Board finds that OWCP has not met its burden of proof to find that the accepted conditions of right ribcage trauma/contusion and internal derangement of the right wrist, right ankle, right hip, and lumbar spine had resolved as of February 8, 2021.

¹² See *V.S.*, Docket No. 19-1792 (issued August 4, 2020).

¹³ See *A.A.*, Docket No. 21-0222 (issued November 17, 2021); *C.S.*, Docket No. 21-0363 (issued August 30, 2021).

¹⁴ 20 C.F.R. §§ 501.2(c) and 501.3.

ORDER

IT IS HEREBY ORDERED THAT the August 24, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 26, 2022
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board