

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

C.P., Appellant	)	
	)	
and	)	<b>Docket No. 20-1474</b>
	)	<b>Issued: December 12, 2022</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Mamaroneck, NY, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, 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  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On August 3, 2020 appellant, through counsel, filed a timely appeal from a June 22, 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 over the merits of this case.

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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 a 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.*

## **ISSUE**

The issue is whether OWCP properly terminated appellant's entitlement to wage-loss compensation and medical benefits, effective December 20, 2019, as she no longer had residuals or disability due to her accepted March 29, 2018 employment injury.

## **FACTUAL HISTORY**

This case has previously been before the Board on different issues.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On April 6, 2018 appellant, then a 43-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on March 29, 2018 she injured her left knee when she was struck by a metal object while in the performance of duty. OWCP accepted her claim for a left knee contusion. Appellant stopped work on March 30, 2018. She returned to part-time limited-duty work on April 1, 2018 and to full-time modified work on July 9, 2019.

By decision dated July 20, 2018, OWCP found that the medical evidence of record was insufficient to establish internal derangement of the left knee causally related to her March 29, 2018 employment injury.

A July 28, 2018 magnetic resonance imaging (MRI) scan of appellant's left knee demonstrated a sprain of the medial cruciate ligament (MCL), insertional tendinosis of the distal quadriceps tendon, lateral patellar tilt, and trace fluid.

Appellant appealed OWCP's July 20, 2018 decision to the Board.

By decision dated September 4, 2018, OWCP denied appellant's claim for wage-loss compensation commencing May 18, 2018. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period causally related to her accepted employment injury.

On September 18, 2018 appellant requested reconsideration. By decision dated January 2, 2019, OWCP denied modification of its September 4, 2018 decision.

On January 18, 2019 Dr. Arnold B. Wilson, a Board-certified orthopedic surgeon, opined that appellant had sustained an injury to the MCL of her left knee due to trauma sustained at work. He advised that she was recovering slowly and should remain on modified duty.

In a progress report dated February 22, 2019, signed on March 1, 2019, Dr. Wilson noted a slow recovery after an MCL injury and opined that appellant could perform modified duty, indicating that she was working four hours per day.

By decision dated March 8, 2019, the Board affirmed OWCP's July 20, 2018 decision, finding that appellant had not met her burden of proof to establish expansion of the claim to include

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<sup>3</sup> Docket No. 18-1645 (issued March 8, 2019); Docket No. 19-1716 (issued March 11, 2020).

left knee internal derangement as causally related to the accepted March 29, 2018 employment injury.<sup>4</sup>

On March 18, 2019 appellant, through counsel, requested reconsideration of OWCP's January 2, 2019 decision.

On April 29, 2019 OWCP referred appellant to Dr. Leon Sultan, Board-certified in emergency medicine, internal medicine, and orthopedic surgeon, for a second opinion examination regarding whether she had continued residuals from her March 29, 2018 employment injury.

In a report dated June 3, 2019, Dr. Sultan reviewed the history of the March 29, 2018 work injury and appellant's complaints of altered sensation and pain in her left knee. On examination he found no swelling, atrophy, or discoloration of the left knee and localized pain with palpation of the distal thigh and superior patellar region. Dr. Sultan further found voluntary resistance to range of motion testing showing symptom magnification. He advised that both Spring and McMurray's tests were negative. Dr. Sultan related that appellant's knee evaluation was "unremarkable except for voluntary resistance to motion testing secondary to 'symptom magnification.'" He noted that the "claimant's subjective complaints do not correspond with objective examination findings." Dr. Sultan noted that the MRI scan study demonstrated a strain of the MCL that had now healed. He opined that, based on his examination findings and experience, appellant's left knee sprain had resolved and she required no additional medical treatment due to the March 29, 2018 employment injury. Dr. Sultan opined that appellant could resume her usual employment without restrictions.

By decision dated June 13, 2019, OWCP denied modification of its January 2, 2019 decision. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period due to her accepted condition of a left knee contusion.

In a report dated June 28, 2019, Dr. Wilson noted that appellant had continued left knee pain with activities, including sitting and standing, following a March 29, 2018 employment injury. He indicated that she wanted to "try to return to full duty." On examination Dr. Wilson found tenderness of the patellofemoral joint radiating into the quadriceps with "muscle atrophy and weakness in the quadriceps when compared to the contralateral side." He found intact motor and sensation and an apprehensive patellofemoral grind. Dr. Wilson advised that appellant could return to her usual employment with restrictions of no lifting over 20 pounds. He emphasized that she should "continue aggressive physical therapy protocol" to help with her pain and reduced motion and indicated that appellant should return in four weeks for reevaluation.

On July 17, 2019 OWCP requested that Dr. Sultan address whether it should expand the acceptance of appellant's claim to include resolved left knee sprain and possible soft tissue trauma.

In an addendum dated July 25, 2019, Dr. Sultan asserted that OWCP should expand acceptance of appellant's claim to include "left knee sprain clinically resolved and left knee soft

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<sup>4</sup> *Supra* note 3.

tissue trauma also resolved” as causally related to the March 29, 2018 employment injury.<sup>5</sup> He found that she could resume her usual employment.

On August 12, 2019 appellant, through counsel, appealed OWCP’s June 13, 2019 decision to the Board.

On August 26, 2019 OWCP expanded the acceptance of her claim to include a left knee sprain that had resolved by June 3, 2019.

On August 26, 2019 OWCP notified appellant of its proposed termination of her wage-loss compensation and medical benefits and as the evidence established that she had no further residuals or disability causally related to her March 29, 2018 employment injury.

Appellant subsequently submitted reports dated September 13, October 31, and December 12, 2019 from a physician assistant.

By decision dated December 19, 2019, OWCP terminated appellant’s wage-loss compensation and medical benefits, effective December 20, 2019. It found that the opinion of Dr. Sultan represented the weight of the evidence and established that she no longer had employment-related disability or residuals.

On December 24, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review regarding the December 19, 2019 termination decision.

By decision dated March 11, 2020, the Board affirmed OWCP’s June 13, 2019 decision, finding that appellant had not met her burden of proof to establish that she was disabled beginning May 18, 2018 causally related to her March 29, 2018 employment injury.<sup>6</sup>

During the telephonic hearing, held on April 15, 2020, OWCP’s hearing representative noted that appellant had resumed part-time modified work in October 2018 and full-time modified work in July 2019. Counsel asserted that the issue of wage-loss compensation was moot as she had resumed full-time work. He requested that the case remain open for medical treatment as her condition sometimes worsened.

By decision dated June 22, 2020, OWCP’s hearing representative affirmed the December 19, 2019 decision.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee’s benefits.<sup>7</sup> After it has determined that an employee

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<sup>5</sup> In his July 25, 2019 report, Dr. Sultan indicated that his examination had shown that appellant’s left knee condition “was not clinically resolved;” however, it appears from the context of his report that this was a typographical error.

<sup>6</sup> *Supra* note 3.

<sup>7</sup> *R.H.*, Docket No. 19-1064 (issued October 9, 2020); *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

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>8</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>9</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>10</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>11</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>12</sup>

### ANALYSIS

The Board finds that OWCP improperly terminated appellant's entitlement to wage-loss compensation and medical benefits, effective December 20, 2019, as she had no further disability or residuals due to her accepted March 29, 2018 employment injury.

In a report dated June 3, 2019, Dr. Sultan, an OWCP referral physician, reviewed appellant's history of injury and her current complaints of continued pain and altered sensation in the left knee. On examination he found no left knee swelling or atrophy, a negative Spring and McMurray's test, and voluntary resistance to range of motion testing. Dr. Sultan opined that appellant's knee examination revealed unremarkable findings and some symptom magnification. He found that her subjective complaints were unsupported by objective findings and that she required no additional medical treatment as a result of her March 29, 2018 employment injury. Dr. Sultan further determined that appellant could return to her usual employment. In a July 25, 2019 addendum, he asserted that she had sustained left knee sprain and soft tissue trauma, now resolved, due to her March 29, 2018 employment injury.

On June 28, 2019 Dr. Wilson, appellant's treating physician, discussed her complaints of left knee pain after an employment injury on March 29, 2018. He related that she could resume her usual employment duties, but provided restrictions of no lifting over 20 pounds. Dr. Wilson found tenderness at the patellofemoral joint radiating into the quadriceps, muscle weakness and atrophy of the quadriceps, and an apprehensive patellofemoral grind. He opined that appellant should continue an aggressive physical therapy protocol and return for evaluation in four weeks.

Dr. Sultan and Dr. Wilson disagreed on whether appellant had continued disability or residuals of her employment injury. The Board, thus, finds that an unresolved conflict in medical opinion exists between Dr. Wilson and Dr. Sultan regarding whether she had further disability or

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

<sup>9</sup> *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

<sup>10</sup> *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

<sup>11</sup> *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

<sup>12</sup> 5 U.S.C. § 8123(a); *L.T.*, Docket No. 18-0797 (issued March 14, 2019); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

requires continued medical treatment causally related to her accepted employment injury.<sup>13</sup> As a conflict remains in the medical evidence regarding whether appellant had further disability or the need for medical treatment due to her accepted employment injury, the Board finds that OWCP has not met its burden of proof to terminate her entitlement to wage-loss compensation and medical benefits.<sup>14</sup>

**CONCLUSION**

The Board finds that OWCP improperly terminated appellant’s entitlement to wage-loss compensation and medical benefits, effective December 20, 2019, as she had no further residuals or disability due to her accepted March 29, 2018 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 22, 2020 decision of the Office of Workers’ Compensation Programs is reversed.

Issued: December 12, 2022  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees’ Compensation Appeals Board

Janice B. Askin, Judge  
Employees’ Compensation Appeals Board

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<sup>13</sup> See *R.C.*, Docket No. 18-0463 (issued February 7, 2020); *B.S.*, Docket No. 19-0711 (issued October 17, 2019);

<sup>14</sup> *C.R.*, Docket No. 19-1132 (issued October 1, 2020).