

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

_____)	
H.A., Appellant)	
)	
and)	Docket No. 22-0900
)	Issued: December 5, 2022
U.S. POSTAL SERVICE, CLIFFSIDE PARK)	
POST OFFICE, Cliffside Park, NJ, Employer)	
_____)	

Appearances:
James D. Muirhead, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 17, 2022 appellant, through counsel, filed a timely appeal from a January 4, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

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.*

³ The Board notes that, following the January 4, 2022 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits with regard to appellant's non-dental conditions, effective December 6, 2020, as he no longer had disability or residuals causally related to his accepted February 28, 2014 employment injury; and (2) whether appellant has met his burden of proof to establish continuing disability or residuals on or after December 6, 2020, causally related to his accepted February 28, 2014 employment injury.

FACTUAL HISTORY

On February 28, 2014 appellant, then a 46-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 28, 2014 he fractured his right leg, right shoulder, and left elbow and struck his lip and front tooth when a vehicle hit him while in the performance of duty. He explained that a vehicle hit his right leg while he was crossing a road. Appellant stopped work on that date. He immediately sought treatment at the emergency room and underwent surgery for left elbow, right shoulder, and right tibia and fibula fractures. OWCP accepted his claim for closed fracture of the right upper end and shaft tibia and fibula, closed fractures of the left and right humerus, open lip wound, broken tooth, concussion, and face contusion. It paid appellant wage-loss compensation on the supplemental rolls beginning April 16, 2014 and on the periodic rolls, effective July 27, 2014.

Appellant underwent right shoulder surgery on July 2, 2014 and additional right lower extremity surgery for removal of hardware of the right tibia on September 18, 2014.

On February 19, 2020 OWCP referred appellant, along with a statement of accepted facts, a copy of the case record, and a series of questions, to Dr. David K. Halley, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of his employment-related injuries.

In a May 27, 2020 report, Dr. Halley reviewed the history of injury and noted appellant's current complaints of right shoulder pain and stiffness and right leg and arm numbness. On examination of appellant's right tibia, he observed numbness over the lateral aspect of his leg and malrotation showing some mild internal rotation of his right leg and foot. Sensory examination revealed decreased sensation over the posterolateral right leg extending from the knee to the ankle. Dr. Halley reported that examination of the right elbow showed full extension with flexion. He diagnosed displaced, angulated, comminuted fracture of the right mid-distal/distal tibial shaft as well as mildly displaced angulated fracture of the mid distal fibular shaft, and right shoulder labral tear and subacromial impingement. Dr. Halley indicated that the surgical procedure to the right tibial fracture was successful, other than some mild internal rotation of the distal tibia and foot. He further explained that appellant's only concern was the "toeing in" that sometimes caused his right toe to kick into his left heel, but indicated that it was not a problem when appellant focused. Dr. Halley opined that appellant's accepted conditions had resolved and reported that appellant was capable of returning to his date-of-injury job of city carrier. He explained that appellant's only concern was walking in snow or icy conditions, walking up and down stairs, and use of the right shoulder passing items out of the window and putting them into correct boxes.

In a treatment note dated August 7, 2020, Dr. Ashley Minton, a Board-certified family practitioner, indicated that appellant was seen for a knee injury that occurred many years ago. She provided examination findings and diagnosed unspecified knee injury.

On September 11, 2020 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits. It found that the report of the second opinion physician, Dr. Halley, represented the weight of the medical evidence that appellant no longer had any disability or residuals from work due to his February 28, 2014 employment injury. OWCP afforded him 30 days to submit additional evidence or argument if he disagreed with the proposed termination.

In a September 30, 2020 statement, appellant, through counsel, noted his disagreement with the September 11, 2020 notice of proposed termination. He alleged that benefits should not be terminated because Dr. Halley expressed concerns about appellant's ability to walk in snowy conditions, climbing up and down stairs, and use of his right shoulder when delivering mail.

By decision dated November 16, 2020, OWCP finalized the notice of proposed termination of appellant's wage-loss compensation and medical benefits, effective December 6, 2020. It found that the weight of the medical evidence rested with the May 27, 2020 report of Dr. Halley that appellant no longer had residuals or disability from work due to his accepted February 28, 2014 employment injury.

On December 1, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on March 2, 2021.⁴

By decision dated May 4, 2021, OWCP's hearing representative affirmed the November 16, 2020 termination decision with modification. She found that OWCP properly terminated appellant's wage-loss compensation and medical benefits, with the exception of appellant's dental condition, based on Dr. Halley's May 27, 2020 second opinion report. The hearing representative noted that appellant may continue to request medical coverage for his accepted dental condition.

OWCP referred appellant to Dr. Robert E. Loy, an oral and maxillofacial surgeon, for a second opinion evaluation regarding whether appellant's accepted dental condition had resolved. In a September 28, 2021 report, Dr. Loy determined that appellant no longer had residuals of his open lip wound and was capable of returning to work. Regarding appellant's accepted dental condition, he reported that appellant had missing teeth at numbers 7, 8, 9, 10, and 11 would benefit from a properly fitting maxillary denture appliance.

On October 8, 2021 appellant, through counsel, requested reconsideration of the May 4, 2021 decision.

By decision dated October 13, 2021, OWCP expanded the acceptance of appellant's claim to include missing teeth #7, 8, 9, 10, and 11.

⁴ Appellant returned to full duty on January 11, 2021.

By decision dated January 4, 2022, OWCP denied modification of its May 4, 2021 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of benefits.⁵ It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁶ OWCP's 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 compensation.⁸ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 6, 2020.

In a May 27, 2020 report, Dr. Halley described the February 28, 2014 employment injury and noted appellant's current complaints of right shoulder pain and stiffness and right leg and arm numbness. He provided examination findings for appellant's right lower extremity, right shoulder, and right elbow. Dr. Halley opined that appellant's accepted conditions had resolved and reported that appellant was capable of returning to his date-of-injury job of city carrier. He explained that appellant's only concern was walking in snow or icy conditions, walking up and down stairs, and use of the right shoulder passing items out of the window and putting them into correct boxes.

Dr. Halley's report, however, did not contain sufficient medical reasoning to establish that appellant no longer had residuals of his right leg and bilateral upper extremity injuries due to his February 28, 2014 employment injury. He did not discuss what objective findings supported his conclusion that appellant's right leg and right and left humerus fractures had resolved, especially when he noted numbness over the lateral aspect of appellant's right leg and mild internal rotation of the right leg and foot.¹⁰ Rationalized medical evidence must include rationale explaining how

⁵ *S.P.*, Docket No. 19-0196 (issued June 24, 2020); *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁶ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see also I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁷ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁸ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁹ *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

¹⁰ *G.G.*, Docket No. 20-0513 (issued January 12, 2021).

the physician reached the conclusion he or she is supporting.¹¹ Dr. Halley's opinion that appellant could return to his date-of-injury job is, therefore, of diminished probative value, and insufficient to justify the termination of appellant's wage-loss compensation and medical benefits.¹²

The Board, therefore, finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits with regard to her non-dental conditions, effective December 6, 2020.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits with regard to her non-dental conditions, effective December 6, 2020.¹³

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 5, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy 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

¹¹ See *A.G.*, Docket No. 21-0315 (issued December 29, 2021); *B.B.*, Docket No. 19-1102 (issued November 7, 2019); *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹² *S.R.*, Docket No. 19-1229 (issued May 15, 2020); *B.M.*, Docket No. 21-0101 (issued December 15, 2021); *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008).

¹³ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.