

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

J.C., Appellant

and

**U.S. POSTAL SERVICE, FREEPORT POST
OFFICE, Freeport, NY, Employer**

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**Docket No. 22-0731
Issued: November 29, 2022**

Appearances:
Appellant, pro se
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 April 4, 2022 appellant filed a timely appeal from an October 18, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 18, 2021, as she no longer had disability or residuals causally related to her accepted conditions.

FACTUAL HISTORY

On August 14, 2009 appellant, then a 56-year-old associate sales clerk, filed a notice of recurrence (Form CA-2a) claiming disability from work beginning June 10, 2009, causally related

¹ 5 U.S.C. § 8101 *et seq.*

to a September 26, 2008 employment injury.² She explained that after her return to light-duty work on December 15, 2008 her condition worsened. Appellant alleged that she felt weakness and unsteadiness in her knees and legs, stress in her lower back from standing and walking back and forth while performing her employment duties.

In a letter dated September 10, 2009, OWCP informed appellant that it was converting her recurrence claim to a new occupational disease claim because she had attributed her medical conditions to additional work duties.

By decision dated October 27, 2009, OWCP accepted appellant's claim for bilateral knee sprain and lumbar radiculopathy. It paid her wage-loss compensation on the supplemental rolls effective July 4, 2009 and on the periodic rolls, effective October 25, 2009. By decision dated June 9, 2010, OWCP expanded the acceptance of appellant's claim to include cervical radiculopathy.

On May 17, 2021 OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions, to Dr. Douglas C. Brown, a Board-certified orthopedic surgeon, for a second-opinion evaluation regarding the status of her employment-related injuries. In a report dated June 23, 2021, Dr. Brown indicated that he reviewed the SOAF and noted that she had several claims accepted for cervical stenosis, lumbar stenosis, cervical fusion, lumbar radiculopathy, and bilateral knee sprain. On physical examination of appellant's cervical spine, he observed flexion and extension to 10 degrees, left and right rotation to 10 degrees, and no restriction of internal and external rotation. Examination of appellant's lumbar spine revealed negative straight leg raise testing. Dr. Brown reported that appellant could bend forward in her wheelchair beyond 90 degrees.

In response to OWCP's questions, Dr. Brown noted that it was difficult to list all of appellant's current diagnoses. He indicated that she had severe degenerative spinal stenosis involving the cervical and lumbar spine and that she had a rigid cervical fusion from C3 to C7. Dr. Brown responded "No" indicating that her work-related conditions had not resolved. He explained that appellant's condition was permanent and that she had reached maximum medical improvement. Dr. Brown opined that she could work part-time, sedentary duty for several hours per day. He completed a work capacity evaluation form (OWCP-5c), which advised that appellant could work part time for four hours with restrictions of no walking, standing, reaching, twisting, bending/stooping, operating a motor vehicle, pushing, pulling, lifting, squatting, kneeling, and climbing.

In a supplemental report dated August 4, 2021, Dr. Brown indicated that the accepted conditions of cervical radiculopathy, bilateral knee sprain, and lumbar radiculopathy had resolved. He explained that appellant had a "temporary aggravation of a preexisting condition" dating back to 2006 and 2008 and that the condition had stabilized back to its preexisting state. Dr. Brown

² Under OWCP File No. xxxxxx038, OWCP accepted appellant's traumatic injury claim (Form CA-1) for bilateral contusions of the knee and lower leg, back sprain and bilateral knee sprains causally related to a September 26, 2008 employment injury. Appellant also has an accepted traumatic injury claim under OWCP File No. xxxxxx318 for right foot sprain, resolved causally related to a September 5, 2006 employment incident. Appellant's claims have not been administratively combined.

also reported that appellant's degenerative spinal stenosis condition was not causally related to her accepted work injury, but was "preexisting and unrelated to the 2009 accident."

On August 24, 2021 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits because her accepted conditions had resolved. It found that the weight of medical evidence rested with the June 23 and August 4, 2021 reports of Dr. Brown, OWCP's second opinion examiner, who found that she no longer had any residuals causally related to her accepted conditions. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

In a new patient consultation report dated September 21, 2021, Eric Simoike, a certified physician assistant, indicated that appellant was evaluated for complaints of right-sided back pain with bilateral foot burning. On examination of appellant's cervical and lumbar spine, he observed normal alignment, normal range of motion, and no tenderness to palpation on the midline or paraspinal areas. Straight leg raise testing was negative bilaterally. Examination of appellant's lower extremities revealed tenderness to palpation. Mr. Simoike diagnosed lumbar spondylosis and lumbar pain with right-sided radiculopathic pain.

A lumbar spine magnetic resonance imaging (MRI) scan dated October 5, 2021 revealed moderate canal stenosis and severe bilateral foraminal stenosis at L1-2 and L2-3, moderate, left greater than right, foraminal stenosis and mild canal stenosis at L3-4, and severe central and bilateral foraminal stenosis at L4-5 and L5-S1.

In a report dated October 5, 2021, Dr. Rishi Wadhwa, a Board-certified neurological surgeon, recounted appellant's complaints of back and leg pain. He reported that a recent MRI scan revealed significantly worsening degenerative changes at multiple levels when compared to a 2013 MRI scan. Dr. Wadhwa indicated that appellant had severe back pain, lumbar radiculopathy, and evidence of severe spondylitic changes. He opined that she was unable to work.

By decision dated October 18, 2021, OWCP finalized the proposed termination of appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical evidence rested with the June 23 and August 4, 2021 reports of Dr. Brown, OWCP's second opinion examiner, who had determined that she no longer had disability or residuals due to her accepted conditions.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of benefits.³ It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴ OWCP's

³ *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).

⁴ *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).

burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ 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.⁷

For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relationship, not OWCP's burden to disprove such relationship.⁸

ANALYSIS

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 18, 2021.

In a June 23, 2021 report, Dr. Brown noted his review of the SOAF and provided examination findings. He explained that it was difficult to list all of appellant's current diagnoses and indicated that she had severe degenerative spinal stenosis. Dr. Brown responded "No" indicating that appellant's work-related conditions had not resolved. He opined that appellant could work part-time, sedentary duty for several hours per day. In a supplemental August 4, 2021 report, Dr. Brown opined that the accepted conditions of cervical radiculopathy, bilateral knee sprain, and lumbar radiculopathy had resolved. He explained that appellant had a "temporary aggravation of a preexisting condition" dating back to 2006 and 2008 and that the condition had stabilized back to its preexisting state.

The Board finds, however, that Dr. Brown's opinion is insufficient to establish that appellant no longer had residuals or disability of her cervical, lumbar, and bilateral knee conditions. Dr. Brown initially responded "No" in his June 23, 2021 report indicating that appellant's work-related conditions had not resolved. However, in his August 4, 2021 supplemental report, he provided a contradictory answer and opined that appellant's accepted conditions of cervical radiculopathy, bilateral knee sprain, and lumbar radiculopathy had resolved. Dr. Brown provided an inconsistent opinion regarding whether appellant's accepted conditions had resolved. The Board has held that medical reports are of limited probative value if they are inconsistent.⁹

⁵ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁶ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

⁸ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁹ *See T.N.*, Docket No. 22-0721 (issued September 14, 2022); *S.H.*, Docket No. 19-0631 (issued September 5, 2019); *L.L.*, Docket No. 18-0861 (issued April 5, 2019).

Dr. Brown further explained that appellant had a “temporary aggravation of a preexisting condition” dating back to 2006 and 2008 and that the condition had stabilized back to its preexisting state. He does not, however, provide a rationalized medical explanation, based on objective medical evidence, to support his opinion. Dr. Brown provided no specific discussion explaining which examination findings supported his conclusion that appellant merely sustained a “temporary aggravation” of a preexisting condition and that her accepted conditions had resolved.¹⁰ Rationalized medical evidence must include rationale explaining how the physician reached the conclusion he or she is supporting.¹¹

The Board finds that Dr. Brown’s June 23 and August 4, 2021 reports were of diminished probative value in establishing that appellant’s accepted conditions had resolved, therefore, OWCP improperly determined that it constituted the weight of the medical evidence.¹² Accordingly, the Board finds that OWCP did not meet its burden of proof to terminate appellant’s wage-loss compensation and medical benefits.¹³

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant’s wage-loss compensation and medical benefits, effective October 18, 2021.

¹⁰ *C.W.*, Docket No. 20-1339 (issued September 15, 2021); *M.R.*, Docket No. 17-0634 (issued July 24, 2018).

¹¹ *B.B.*, Docket No. 19-1102 (issued November 7, 2019); *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹² *G.Y.*, Docket No. 19-1683 (issued March 16, 2021); *S.R.*, Docket No. 19-1229 (issued May 15, 2020).

¹³ *S.R.*, *id.*; *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).

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2021 decision of the Office of Workers' Compensation Programs is reversed.¹⁴

Issued: November 29, 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

¹⁴ On return of the case record, OWCP should consider combining all of appellant's relevant claim files.