

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

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| <p><b>L.F., Appellant</b></p>   | ) |                                 |
|   | ) |                                 |
| <b>and</b>  | ) | <b>Docket No. 22-0754</b>       |
|   | ) | <b>Issued: October 14, 2022</b> |
| <b>U.S. POSTAL SERVICE, BULK MAIL<br/>CENTER, Capitol Heights, MD, Employer</b> | ) |                                 |
|   | ) |                                 |

*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  
 JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On April 12, 2022 appellant filed a timely appeal from an April 4, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 4, 2022, as she no longer had residuals or disability causally related to her accepted October 11, 1992 employment injury.

**FACTUAL HISTORY**

On October 11, 1992 appellant, then a 25-year-old casual clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her back when lifting sacks of mail and

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

dumping them onto the mail belt while in the performance of duty. She stopped work on the date of injury. OWCP accepted the claim for thoracic and lumbosacral sprains, thoracic or lumbosacral neuritis or radiculitis, tear of the dorsal capsule of the right wrist with traumatic cyst, right carpal tunnel syndrome, and excision of ganglion cyst. It paid appellant wage-loss compensation on supplemental rolls commencing November 27, 1992 and on the periodic rolls commencing September 18, 1994.

On August 6, 2020 OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions, for a second opinion evaluation with Dr. Stuart J. Gordon, a Board-certified orthopedic surgeon, for an opinion regarding the status of appellant's accepted work conditions, and her current work restrictions. The SOAF noted the claim had been accepted for lumbosacral and thoracic strains, right wrist dorsal capsule, and right wrist cyst.

In a report dated September 3, 2020, Dr. Gordon reviewed the SOAF and medical record and noted that the claim had been accepted for thoracic, lumbar, and right wrist strain, and dorsal capsule tear. On examination, he reported that appellant ambulated with a reciprocal gait, had full cervical, thoracic range, and right wrist range of motion (ROM), mild flattening of lumbar lordosis, guarded, but full lumbar ROM, no cervical, lumbar or thoracic spasm, negative right wrist Finkelstein test, intact sensation through the right wrist dorsal radial sensory nerve, no right wrist Watson, Lichtman, Phalen's, or Tinel's. Dr. Gordon diagnosed unrelated lumbar degenerative disease, chronic thoracolumbar strain at maximum medical improvement, and right wrist strain, status post carpal tunnel release, first dorsal compartment release at maximum medical improvement. He reported objective right wrist and hand weakness and atrophy and no significant objective lumbar spine findings. Dr. Gordon concluded that appellant's conditions had not resolved as she had a permanent chronic lumbar strain and permanent right wrist strain. He also opined that she could not return to full-duty work. In an attached work capacity evaluation (Form OWCP-5c) of even date, Dr. Gordon found that appellant was capable of sedentary work part time with restrictions, which were permanent.

On August 9, 2021 OWCP referred appellant, along with the August 6, 2020 SOAF, a copy of the case record, and a series of questions, for a second opinion evaluation with Dr. Rafael Lopez, a Board-certified orthopedic surgeon, for an opinion regarding the status of appellant's accepted employment-related conditions, and her current work restrictions. In the referral letter, OWCP noted that the claim was accepted for lumbosacral strain, thoracic strain, tear of the right wrist dorsal capsule, and right wrist cyst.

In an attending physician's report (Form CA-20) dated August 16, 2021, Dr. Peter Trent, a Board-certified orthopedic surgeon, noted a 1992 injury date and diagnosed chronic low back pain. He opined that appellant was permanently disabled due to her work injury. In a progress report of even date, Dr. Trent noted that appellant was seen in follow up for chronic low back pain and wrist problems. He related that appellant had intermittent, recurrent numbness, tingling, and paresthesias in both hands, greater left than right; however, the etiology of the current condition was unclear. Dr. Trent diagnosed chronic low back pain, degenerative arthritis of the left wrist, and primary osteoarthritis of the shoulder.

In a report dated August 21, 2021, Dr. Lopez reviewed the SOAF and diagnostic studies, and noted that appellant's claim had been accepted for lumbosacral strain, thoracic strain, right wrist strain, and right wrist dorsal capsule tear. On examination of appellant's lumbar spine, he reported normal gait; no evidence swelling, crepitation, atrophy, or deformity; unrestricted ROM, negative heel drop, spurling, and Patrick; and 5/5 lower extremity strength. On examination of appellant's wrists, Dr. Lopez reported no evidence of bilateral significant swelling, spasm, atrophy, crepitation, or deformity; negative Tinel's, Phalen's, and Finkelstein's tests; no evidence of significant erythema, swelling, spasm, atrophy, or deformity; intact bilateral hand and ligaments; full bilateral hand joint ROM, and bilateral wrist ROM of 60 degrees extension and flexion, 15 degrees radial deviation, and 5 degrees ulnar deviation. He opined that the accepted conditions had resolved and there were no current diagnoses causally related to the accepted work injury. Dr. Lopez concluded that appellant was capable of returning to her date-of-injury job.

On October 6, 2021 OWCP issued a notice of proposed termination of wage-loss compensation and medical benefits. It indicated that the weight of the medical opinion evidence rested with the well-rationalized opinion of Dr. Lopez, an OWCP second-opinion physician, who found that appellant no longer had residuals or disability causally related to the accepted employment injury.

OWCP thereafter received an April 2, 2019 magnetic resonance imaging (MRI) scan of appellant's left wrist. The findings were listed as diffuse low T1 signal within the lunate bone consistent with osteonecrosis, severe degenerative change of the radiocarpal, midcarpal and triscaphe joints, and tearing of the scapholunate ligament.

In an October 11, 2021 report, Dr. Trent related that appellant was seen following an electromyogram/nerve conduction velocity (EMG/NCV) study of appellant's left wrist on September 27, 2021. He noted that he had reviewed the EMG study with appellant and had referred her to a hand specialist. Dr. Trent concluded that appellant had carpal tunnel syndrome and chronic low back pain.

An October 12, 2021 MRI scan of appellant's lumbar spine was interpreted as revealing minimal degenerative changes without significant narrowing of the spinal canal or neural foramina.

In an October 20, 2021 report, Dr. Craig Person, a Board-certified hand surgeon, noted that appellant had been referred by Dr. Trent for evaluation of her carpal tunnel syndrome. He related that an EMG/NCV study performed on October 11, 2021 revealed severe carpal tunnel syndrome of the left wrist. Dr. Person indicated that he had discussed these findings with appellant and that he had recommended surgical decompression.

Appellant was seen again on October 27, 2021 by Dr. Trent for review of her October 12, 2021 lumbar MRI scan. Dr. Trent related diagnoses of chronic low back pain and lumbar spondylosis.

By decision dated April 4, 2022, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits effective that day. It found that Dr. Lopez' opinion constituted

the weight of the medical opinion evidence that appellant no longer had any residuals or disability due to the accepted October 11, 1992 employment injury.

### **LEGAL PRECEDENT**

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>2</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>3</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>5</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>6</sup>

### **ANALYSIS**

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 4, 2022.

OWCP based its decision to terminate appellant's wage-loss compensation and medical benefits on the August 21, 2021 opinion of Dr. Lopez, OWCP's second opinion physician, who found that the accepted conditions had ceased with no residuals, and that appellant no longer had a disability causally related to the accepted October 11, 1992 injury.

The Board finds, however, that the SOAF provided to Dr. Lopez on August 9, 2021 was deficient, as it failed to note all of the accepted conditions. Appellant's accepted right carpal tunnel syndrome and excision of ganglion cyst were not listed on the SOAF. OWCP's procedures dictate that, when an OWCP medical adviser, second opinion specialist, or impartial medical examiner renders a medical opinion based on a SOAF, which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is

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<sup>2</sup> See *G.S.*, Docket No. 20-0564 (issued June 23, 2022); *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>3</sup> See *G.S.*, *id.*; *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>4</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>5</sup> *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

<sup>6</sup> *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

seriously diminished or negated altogether.<sup>7</sup> The Board finds that as Dr. Lopez based his August 21, 2021 report on an inaccurate SOAF, the probative value of his opinion is diminished.<sup>8</sup>

Once OWCP undertook development of the record, it was required to complete development of the record by procuring medical evidence that would resolve the relevant issue in the case.<sup>9</sup> As OWCP did not provide an accurate SOAF to the second opinion physician, the Board finds that it did not meet its burden of proof in terminating appellant's wage-loss compensation and medical benefits.

### **CONCLUSION**

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's entitlement to wage-loss compensation and medical benefits, effective April 4, 2022.

### **ORDER**

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

Issued: October 14, 2022  
Washington, DC

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

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

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

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<sup>7</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); see *K.L.*, Docket No. 21-0104 (issued February 24, 2022); *S.C.*, Docket No. 18-1011 (issued March 23, 2020).

<sup>8</sup> See *K.L., id.*; *P.C.*, Docket No. 20-0935 (issued February 19, 2021).

<sup>9</sup> See *K.L., id.*; *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *J.F.*, Docket No. 17-1716 (issued March 1, 2018).