

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

S.F., Appellant)

and)

U.S. POSTAL SERVICE, BETHPAGE)
PROCESSING & DISTRIBUTION CENTER,)
Bethpage, NY, Employer)

**Docket No. 21-1338
Issued: September 19, 2022**

Appearances:

*Thomas S. Harkins, Esq., for the appellant¹
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 September 6, 2021 appellant, through counsel, filed a timely appeal from a May 28, 2021 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 May 28, 2021 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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 issue are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 15, 2020, as she no longer had disability or residuals causally related to her accepted employment conditions; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals on or after April 15, 2020 causally related to her accepted June 28, 2018 employment injury.

FACTUAL HISTORY

OWCP accepted that on June 28, 2018 appellant, then a 41-year-old mail handler, sustained post-concussional syndrome; strain of muscle, fascia, and tendon at the neck level; and post-traumatic headache and vertigo when she was struck in the forehead by a pallet while in the performance of duty. It assigned OWCP File No. xxxxxx834 and paid wage-loss compensation for periods of disability.⁴

In a report dated April 22, 2019, Dr. Steven Ender, a Board-certified neurologist serving as an OWCP referral physician, determined that appellant ceased to have residuals of her accepted June 28, 2018 employment injury. In contrast, Dr. Itzhak Haimovic, an attending Board-certified neurologist, opined in several reports, including a report dated May 2, 2019, that appellant continued to have disability and residuals related to her accepted June 28, 2018 employment injury.

In order to resolve the conflict in the medical opinion evidence, OWCP referred appellant to Dr. Shafi Wani, a Board-certified psychiatrist and neurologist, for an impartial medical examination and evaluation regarding whether appellant had residuals and disability related to any of her accepted employment injuries. In November 12, 2019 and January 19, 2020 reports, Dr. Wani, the impartial medical examiner (IME), determined that appellant had no work-related residuals/disability.

On February 26, 2020 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits, finding that appellant no longer had any disability or residuals from work due to her accepted employment injury. It afforded her 30 days to submit additional evidence or argument.

By decision dated April 14, 2020, OWCP finalized the proposed termination of appellant's wage-loss compensation and medical benefits, effective April 15, 2020. It accorded the special weight of the medical evidence to the opinion of IME, Dr. Wani.

Appellant requested reconsideration and submitted additional medical evidence. By decision dated May 28, 2021, OWCP denied modification of the April 14, 2020 termination decision.

⁴ Under a separate claim, assigned OWCP File No. xxxxxx254, a ppellant claimed that she sustained a head injury when a box fell on her forehead on June 2, 2015. OWCP administratively authorized payment of medical expenses, but formally denied the claim on January 7, 2016. Under another separate claim, assigned OWCP File No. xxxxxx920, it accepted that on September 18, 2017 appellant sustained a cervical strain. These claims have not been administratively combined.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁵ 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.⁶ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 15, 2020.

In support of its decision to terminate appellant's wage-loss compensation and medical benefits effective April 15, 2020, OWCP specifically referenced medical evidence obtained from earlier claims regarding accepted conditions of similar parts of the body, OWCP File Nos. xxxxxx254 and xxxxxx920. Under its procedures, OWCP has determined that cases should be administratively combined where a new injury case is reported for an employee who previously filed an injury claim for the same part of the body and where correct adjudication depends on cross-referencing between files.⁸ OWCP's procedures further provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.⁹ OWCP relied on the opinion of Dr. Wani in justifying its termination action, but it has not administratively combined the case records from OWCP File Nos. xxxxxx254 and xxxxxx920 with the case record for the present claim, OWCP File No. xxxxxx834, or incorporated the relevant evidence from those files concerning appellant's neck/head conditions into the current case record.

As noted above, once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.¹⁰ As OWCP did not administratively combine the files prior to the termination, it failed to meet its burden of proof.¹¹

⁵ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁶ *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁷ *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c(1) (February 2000); *V.G.*, Docket No. 19-0670 (issued April 30, 2020); *L.P.*, Docket Nos. 18-1558, 18-1568 (issued June 21, 2019); *L.S.*, Docket Nos. 17-1863, 17-1867, 17-1868 (issued April 18, 2018); *W.S.*, Docket No. 15-0969 (issued October 5, 2015); *C.C.*, Docket No. 14-1576 (issued March 9, 2015).

⁹ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

¹⁰ *See supra* note 5.

¹¹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 15, 2020.

ORDER

IT IS HEREBY ORDERED THAT the May 28, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 19, 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