United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant **and** **U.S. POSTAL SERVICE, FRANKLIN POST OFFICE, Franklin, TN, Employer**	))))))))	**Docket No. 22-0300** **Issued: April 10, 2023**

Appearances:
Shannon Bravo, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On December 23, 2021 appellant, through counsel, filed a timely appeal from an August 13, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

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[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 August 13, 2021 decision, OWCP received additional evidence. 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 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, effective April 27, 2021, as he no longer had disability or residuals causally related to his accepted November 1, 2019 employment injury; and (2) whether appellant has established that he had continuing disability or residuals on or after April 27, 2021, causally related to his accepted November 1, 2019 employment injury.

FACTUAL HISTORY

On November 6, 2019 appellant, then a 41-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 1, 2019, he sustained a left shoulder injury when a customer dropped a pallet on his left shoulder while in the performance of duty. He stopped work on the date of injury.

On December 2, 2019 OWCP accepted the claim for sprain of left shoulder joint.

Appellant returned to limited-duty work from December 11, 2019 through January 6, 2020, and stopped work on January 7, 2020. OWCP paid him wage-loss compensation on the supplemental rolls commencing January 7, 2020, and on the periodic rolls commencing April 26, 2020.

OWCP received treatment notes dated November 12, 19, and December 5, 2019, and January 7, 2020, from Dr. Jason Williams, Board-certified in physical medicine and rehabilitation. In his November 12, 2019 notes, Dr. Williams diagnosed unspecified injury to the muscle of the left rotator cuff, and sprain of the acromioclavicular joint of the left shoulder. In his November 19, 2019 notes, he diagnosed impingement syndrome of the left shoulder and cervical radiculopathy. On December 5, 2019 Dr. Williams diagnosed left shoulder impingement syndrome.

In a January 7, 2020 work capacity evaluation (Form OWCP-5c), Dr. Williams noted that appellant was unable to perform his usual duties and referred him to an orthopedic specialist for further evaluation.

In a January 10, 2020 reports, Dr. David West, an osteopathic physician specializing in orthopedic surgery, noted that appellant presented with shoulder pain. He related findings on examination of left shoulder tenderness, deltoid impingement testing positive, positive cross-body adduction, pain with resisted external rotation, and restricted range of motion (ROM). Dr. West found evidence of rotator cuff tear and impingement and requested surgical intervention for open decompression, distal clavicle excision, and cuff repair.

On January 23, 2020 OWCP authorized left rotator cuff repair and left partial removal collar bone surgery.

Appellant underwent the authorized left shoulder surgery on February 4, 2020. The operative report dated February 4, 2020 related that Dr. West performed a left shoulder open subacromial decompression. Dr. West noted that during the procedure he did not appreciate any repairable rotator cuff injury, some thickened bursa was noted.

In an April 3, 2020 visit, Dr. Joseph R. Blythe, an osteopathic physician specializing in orthopedic surgery, reviewed appellant's history of injury and complaints regarding neck pain, left arm numbness, and tingling. He diagnosed cervicalgia, recurrent, and radiculopathy, cervical region. Dr. Blythe requested that appellant undergo a magnetic resonance imaging (MRI) scan and electromyography/nerve conduction velocity (EMG/NCV) studies of the upper extremities.

In an April 13, 2020 statement, appellant indicated that he never had issues with his shoulders or neck prior to his November 1, 2019 work injury. He explained that the shoulder surgery helped his shoulder, but his neck pain had worsened.

In April 14, 2020 treatment notes, Dr. West opined that appellant had reached maximum medical improvement (MMI) and released him to work with no restrictions, effective that date. He noted that appellant was still being seen for the neck issues with a different physician.

In an April 20, 2020 note, Dr. Blythe referenced appellant's visit of April 3, 2020. He related that appellant had C4-5 cervical spondylosis with mild loss of disc height, diffuse disc bulge eccentric to right, effacement of the thecal sac, moderate right-sided foraminal stenosis secondary to loss of disc height, uncinate hypertrophy and facet hypertrophy, and C5-6 cervical spondylosis with moderate loss of disc height, disc desiccation and large disc bulge effacing the thecal sac causing central stenosis, mild foraminal stenosis secondary to uncinate hypertrophy, and left upper extremity radiculitis. Dr. Blythe opined that, "all subsequent care related to his neck/shoulder from the date of injury is causally related to the work-related injury" of November 1, 2019.

On April 21, 2020 OWCP expanded acceptance of the claim to include cervical strain.

Appellant underwent an EMG/NCV on May 15, 2020, conducted by Dr. Anna-Louise Molette, Board-certified in physical medicine and rehabilitation. Dr. Molette concluded that appellant had a normal examination with no electrodiagnostic evidence of any focal or general neuropathy, plexopathy, or active cervical radiculitis from C5-T1.

In a May 27, 2020 report, Dr. Blythe diagnosed cervicalgia and radiculopathy in the cervical region. He noted that the EMG/NCV bilateral upper extremity was without deficits, but that appellant's MRI scan was grossly under read. Dr. Blythe recommended anterior cervical discectomy and fusion (ACDF) at C5-6 and total disc replacement (TDR) at C4-5.

On July 15, 2020 OWCP referred the request for surgery from Dr. Blythe and a statement of accepted facts (SOAF) to the district medical adviser (DMA) for review to determine if the surgery was medically necessary.

In a report dated July 27, 2020, the DMA, Dr. Franklin M. Epstein, Board-certified in neurology and neurosurgery, opined that the surgery request should be denied. He reviewed appellant's history of injury and treatment and noted that Dr. Blythe indicated in his April 20, 2020 notes that he found no compelling left-sided neural compression on the cervical MRI scan. Dr. Epstein also noted that in subsequent May and July notes, Dr. Blythe reversed his original conservative recommendations and proposed a two-level cervical spine surgery, despite a new and negative EMG study and no other clinical or diagnostic changes. He explained that the non-dermatomal left upper extremity tingling may be nonspecific, or it may be attributable to a contusion/stretch injury of the upper trunk of the left brachial plexus, based on the mechanism of

injury. Dr. Epstein also noted that most electromyographers could not reliably diagnose plexus injuries and that plexus pathology would not respond to the proposed cervical surgery. He opined, "it is my medical opinion that the surgery proposed is not medically necessary. I believe it is not likely to provide cure, give relief, or reduce the degree or the period of disability."

On August 11, 2020 OWCP provided appellant with a copy of the DMA's report and notified appellant that a second opinion examination was warranted, which would determine whether he had any remaining residuals and any continuing disability from work, and whether the proposed cervical spine surgery was necessary.

On December 9, 2020 OWCP referred appellant for a second opinion evaluation with Dr. Martin H. Wagner, a Board-certified neurologist, to determine whether appellant had residuals from the accepted conditions of sprain of left shoulder and cervical strain, whether the additional cervical conditions noted by Dr. Blythe were caused by the accepted work injury, and whether the surgery request from Dr. Blythe for ACDF at C5-6 and TDR at level C4-5 was medically necessary. Dr. Wagner also was requested to provide an opinion whether appellant had reached maximum medical improvement (MMI) and address whether appellant was able to return to work.

In a January 12, 2021 report, Dr. Wagner related appellant's physical examination findings. He related that appellant's neck was supple with full active painless ROM, without bruit; there was full flexion, extension, and rotation to the right and left, and lateral flexion to the right and left; and there was no palpable cervical paraspinal muscle spasm or tenderness. Dr. Wagner also found that appellant had full active abduction, adduction, flexion, and extension of both shoulders. He further found that deep tendon reflexes were 1+ and symmetrical in the upper extremities with flexor plantar responses; there was no focal motor, sensory or coordination deficit; there was slight give way weakness of the left wrist extensors, but normal strength in the let supraspinatus, infraspinatus, deltoid, biceps, triceps, finger abductors and adductors, finger flexors and extensors; there was no muscle atrophy in the arms, forearms, and hands; the thenar, hypothenar, and first dorsal interpose muscles were strong and normal in bulk and contour; there was no dermatomal sensory loss to pinprick in the upper extremities; there was no objective sensory loss to pinprick in peripheral nerve distribution of the upper extremities; there was no objective sensory loss to pinprick or temperature specifically in the fourth or fifth digits of the left hand; coordination was intact for finger to nose with normal fine motor coordination of both hands.

Dr. Wagner noted that appellant had a work-related left shoulder injury on November 1, 2019, and that appellant reported neck pain one month after the incident and numbness of the left hand, fourth and fifth digits, five months after the injury. He found that appellant's cervical MRI scan showed no left-sided neural impingement to explain any left-sided neck pain or numbness in the left hand, fourth and fifth digits. Dr. Wagner opined that right-sided neural impingement changes revealed on the cervical MRI scan were chronic and due to age-related degenerative changes and not trauma. He explained that the EMG and NCV studies were normal and showed no electrophysiological evidence of left-sided or right-sided cervical radiculopathy or peripheral nerve impingement syndrome at the elbow or wrist. Dr. Wagner also noted that EMG and NCV studies showed no left C8 radiculopathy and no ulnar entrapment at the left elbow or wrist to explain the complaints of numbness and paresthesia in the left hand, fourth and fifth digits. He indicated that his examination revealed no objective evidence of left C8 radiculopathy of left ulnar neuropathy, no objective sensory loss in the left hand, fourth or fifth digits, and no objective weakness or muscle atrophy of muscles supplied by the C8 myotome, C8 dermatome, or ulnar

nerve, and noted that the giveaway "weakness" on examination of the left wrist extensors was consistent with lack of full effort.

Dr. Wagner found that there were no clinical findings to support residuals from the accepted conditions of sprain of the left shoulder and cervical strain. He opined that the accepted conditions had resolved and that the changes seen on the cervical spine MRI scan were normal age-related degenerative changes and were not causally related to the accepted November 1, 2019 work injury. Dr. Wagner further opined that the cervical spine surgery was medically unnecessary based on the medical records, the neurological examination, and the cervical spine studies. He indicated that appellant had reached MMI and required no additional physical therapy, work hardening program, or surgery related to the November 1, 2019 work injury. Dr. Wagner completed a work capacity evaluation (Form OWCP-5c), and indicated that appellant could perform his usual job without restrictions.

On February 18, 2021 OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits, as he no longer had residuals or disability causally related to his accepted November 1, 2019 employment injury. It informed him that the weight of the medical opinion evidence rested with the report from Dr. Wagner and afforded appellant 30 days to submit evidence and argument challenging the proposed action.

In a March 15, 2021 response to the notice of proposed termination, counsel for appellant argued that OWCP failed to follow its procedures to develop the medical evidence, once appellant's claim was accepted; it committed error when it substituted its own diagnosis for that of a qualified treating physician with regard to appellant's cervical condition; erred when it attributed the weight of the medical evidence to a report based on an inaccurate medical and factual history; and failed to meet its burden of proof to terminate appellant's ongoing compensation and medical care.

By decision dated April 26, 2021, OWCP terminated appellant's wage-loss compensation and medical benefits, effective April 27, 2021. It found that the weight of the medical evidence rested with the January 12, 2021 report of Dr. Wagner, the second opinion physician.

On May 5, 2021 appellant, through counsel, requested a review of the written record before a representative of OWCP's Branch of Hearings and Review and argued that OWCP failed to follow its procedures to properly develop the medical evidence once the claim was accepted; committed error when it substituted its own diagnosis for that of a qualified treating physician when determining what conditions to accept under the claim; erroneously placed the weight of the medical evidence with the referral physician who contradicted the SOAF and provided an opinion without a complete factual and medical history; erroneously placed the burden of proof on appellant to show he continued to have residuals of his accepted work injury; and failed to meet its burden of proof to terminate his medical care and compensation.

In an April 15, 2021 report, Dr. Blythe requested approval for surgery to include an anterior cervical fusion and TDR. He explained that appellant had C4-5 cervical spondylosis with loss of disc height; diffuse disc bulge eccentric to right; effacement of thecal sac; moderate right-sided foraminal stenosis secondary to loss of disc height; uncinate hypertrophy and facet hypertrophy; C5-6 cervical spondylosis with moderate loss of disc height, disc desiccation and large disc bulge effacing thecal sac, causing central stenosis; mild foraminal stenosis secondary to uncinate

hypertrophy; left upper extremity radiculitis, and status post left shoulder arthroscopy with Mumford procedure. Dr. Blythe opined that appellant continued to suffer from his work-related injury. He also contended that Dr. Wagner's level of expertise was limited with regard to spine injuries.

In an April 20, 2021 treatment note, Dr. Blythe noted that appellant was seen for neck pain and left shoulder, arm, and hand numbness, while awaiting approval for neck surgery. He related that appellant had been unable to work and suffered with pain and symptoms daily. Dr. Blythe explained that C5-6 was the worst level, warranting a fusion, while C4-5 was less severe and would do better with TDR. He diagnosed cervical spondylosis with radiculopathy, cervical radiculopathy, neck pain, and accident while engaged in work activity. Dr. Blythe recommended that appellant be seen for a second opinion regarding the need for further surgical treatment.

In an April 20, 2021 attending physician's report (Form CA-20), Dr. Blythe diagnosed C4-5 spondylosis and loss of disc, C5-6 spondylosis, a large disc bulge, stenosis, and radiculopathy. He marked the box "Yes" in regard to whether the conditions were caused or aggravated by the employment activity and noted that the period of total disability began on May 27, 2020.

In an April 20, 2021 duty status report (Form CA-17), Dr. Blythe recommended that appellant return to regular work on April 27, 2021.

By decision dated August 13, 2021, OWCP's hearing representative affirmed the April 26, 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 an employee's benefits.[4] 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.[5] Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[6]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[7] Terminate authorization for medical treatment, OWCP

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[4] *See S.P.,* Docket No. 21-1163 (issued March 30, 2022); *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).

[5] *See R.P., id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

[6] *See R.P., supra* note 4; *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[7] *See R.P., supra* note 4; *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009). *Furman G. Peake*, 41 ECAB 361, 364 (1990).

must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.[8]

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 27, 2021, as he no longer had disability or residuals causally related to his accepted November 1, 2019 employment injury.

OWCP accepted that the November 1, 2019 employment injury caused left shoulder joint sprain and cervical strain. The Board finds that the weight of the medical evidence is represented by the January 12, 2021 report of Dr. Wagner, the second opinion physician, who opined that the accepted conditions had resolved. Dr. Wagner reviewed the factual and medical history and the diagnostic studies, examined appellant, and made detailed objective findings. He provided medical rationale for his opinion that appellant had no residuals of the accepted conditions of sprain of left shoulder joint and cervical strain. Dr. Wagner based his opinion on his extensive physical examination findings related to appellant's neck and left shoulder, and his conclusion that appellant had no clinical findings to support residuals from the accepted conditions of sprain of the left shoulder and cervical strain. He opined that the accepted conditions had resolved, and that the changes seen on the cervical spine MRI scan were normal age-related degenerative changes, and were not causally related to the accepted November 1, 2019 work injury, and that, therefore, surgery was not medically necessary for the effects of the accepted employment conditions. The Board has reviewed the opinion of Dr. Wagner and finds that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of continuing residuals/disability of the accepted conditions related to the November 1, 2019 employment injury.[9]

Appellant submitted treatment notes dated November 12 and 19, December 5, 2019, and January 7, 2020, from Dr. Williams, who alternatively diagnosed unspecified injury to the muscle of the left rotator cuff, and sprain of the acromioclavicular joint of the left shoulder; and impingement syndrome of the left shoulder. Appellant's left shoulder impingement condition has not been accepted, and these reports do not address causation. A medical report is of limited probative value if it does not contain medical rationale explaining how a given medical condition or disability has an employment-related cause.[10]

On January 7, 2020 Dr. Williams referred appellant to an orthopedic surgeon for further evaluation regarding appellant's disability status. Appellant underwent a surgical procedure on February 4, 2020 which was authorized for left rotator cuff repair and left partial removal collar bone. However, Dr. West noted in his operative report of even date that during the procedure he

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[8] *See R.P., supra* note 4; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

[9] *See C.P.,* Docket No. 21-0173 (issued March 23, 2022); *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *D.W.,* Docket No. 18-0123 (issued October 4, 2018); *Melvina Jackson*, 38 ECAB 443 (1987) (regarding the importance, when assessing medical evidence, of such factors as a physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion).

[10] *See T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

did not appreciate any repairable rotator cuff injury, rather only some thickened bursa was noted. In his report dated April 14, 2020, Dr. West noted that appellant had reached MMI, and released appellant to full-time work. There is no medical evidence of record that appellant had continued residuals or disability related to his accepted left shoulder sprain after April 27, 2021.

The Board also notes that OWCP received copies of the April 3 and May 27, 2020 reports from Dr. Blythe; however, these reports predate the termination, and do not offer any opinion regarding whether appellant had any disability or residuals after April 27, 2021 of his accepted left shoulder sprain and cervical strain. Thus, they are of no probative value.[11]

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 27, 2021, as he no longer had disability or residuals causally related to the accepted employment injury.

LEGAL PRECEDENT -- ISSUE 2

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing residuals or disability after that date, causally related to the accepted employment injury.[12] To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such causal relationship.[13]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish continuing disability or residuals after April 27, 2021, causally related to his accepted November 1, 2019 left shoulder sprain and cervical strain.

As previously noted, the Board has found that OWCP properly relied on the opinion of Dr. Wagner, the second opinion physician, in terminating appellant's compensation effective April 27, 2021. Therefore, the burden properly shifted to appellant to establish that he was entitled to compensation after that date.

Appellant submitted several additional reports from Dr. Blythe. On April 20, 2021 Dr. Blythe completed a Form CA-17 report and recommended that appellant return to work on April 27, 2021. This report does not contain an opinion as to whether appellant had any employment-related disability or residuals after April 27, 2021; therefore, it is of no probative value.[14]

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[11] *See K.K.,* Docket No. 22-0270 (issued February 14, 2023).

[12] *See S.M.*, Docket No. 18-0673 (issued January 25, 2019); *C.S.*, Docket No. 18-0952 (issued October 23, 2018); *Manuel Gill,* 52 ECAB 282 (2001).

[13] *Id.*

[14] *See L.B.,* Docket No. 18-0533 (issued August 27, 2018); *D.K.,* Docket No. 17-1549 (issued July 6, 2018).

In an April 15, 2021 report, Dr. Blythe reiterated that he was requesting surgery to include an anterior cervical fusion and total disc replacement, opined that appellant continued to suffer from his work injury. In an April 20, 2021 treatment note, he diagnosed cervical spondylosis with radiculopathy, cervical radiculopathy, neck pain, and accident while engaged in work activity. However, these reports predate the claimed period of continuing disability, thus, they are of no probative value.[15]

In an April 20, 2021 Form CA-20 report, Dr. Blythe noted finding of C4-5 spondylosis and loss of disc, C5-6 spondylosis, a large disc bulge, stenosis, and radiculopathy. He marked the box "Yes" in regard to whether the conditions were caused or aggravated by an employment activity and noted that the period of total disability began on May 27, 2020. The Board has held, however, that an opinion on causal relationship which consists of a physician checking a box in response to a form question, without more by way of supporting medical rationale explaining how the employment activity caused the diagnosed condition, is of little probative value.[16]

As appellant has not submitted any rationalized medical evidence establishing that he had employment-related disability or residuals after April 27, 2021, causally related to the accepted November 1, 2019 employment injury, he has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation benefits and medical benefits, effective April 27, 2021, as he no longer had disability or residuals causally related to his accepted November 1, 2019 employment injury. The Board further finds that appellant has not met his burden of proof to establish continuing disability or residuals after April 27, 2021, causally related to his accepted November 1, 2019 employment injury.

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[15] *Supra* note 11.

[16] *See B.D.,* Docket No. 22-0503 (issued September 27, 2022); *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *O.N.*, Docket No. 20-0902 (issued May 21, 2021); *Lillian M. Jones*, 34 ECAB 379 (1982).

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2021 decision of the Office of Workers' Compensation Programs is affirmed.[17]

Issued: April 10, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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

[17] The Board notes that OWCP has not issued a final decision regarding appellant's request for cervical surgery. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.10.d(16) (September 2010). As OWCP has not issued a final adverse decision on appellant's request for surgery, that issue is not currently before the Board. *See* 20 C.F.R. §§ 501.2(c) and 501.3.