

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

C.G., Appellant)	
)	
and)	Docket No. 23-0013
)	Issued: April 24, 2023
U.S. POSTAL SERVICE, PATERSON MAIN)	
POST OFFICE, Paterson, 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:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 6, 2022 appellant, through counsel, filed a timely appeal from a July 28, 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.

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective July 23, 2021, as she no longer had disability causally related

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.*

to her accepted October 11, 2006 employment injury; and (2) whether appellant met her burden to establish continuing disability on and after July 23, 2021 causally related to her accepted October 11, 2006 employment injury.

FACTUAL HISTORY

On October 12, 2006 appellant, then a 41-year-old letter carrier, filed a traumatic injury claim (Form CA-1), alleging that on October 11, 2006 she developed neck and back pain from the weight of the mail she was carrying on her route while in the performance of duty. OWCP accepted the claim for right shoulder and upper arm trapezius muscle sprain, and right brachial neuritis or radiculitis. It accepted appellant's February 18, 2008 recurrence claim and paid her on the supplemental rolls commencing February 26, 2008 and on the periodic rolls commencing April 12, 2009. Appellant underwent authorized anterior cervical discectomy and fusion with allograft bone at C4-5 on March 12, 2009.

In a report dated March 10, 2021, Dr. Mark J. Ruoff, a Board-certified orthopedic surgeon, diagnosed cervical disc degeneration, and history of C4-5 cervical fusion. He noted that appellant continued to experience pain in the neck with radiation to the left shoulder. On physical examination Dr. Ruoff reported tenderness in the paracervical muscles. He noted that appellant remained disabled from work.

In an attending physician's report (Form CA-20) dated March 10, 2021, Dr. Ruoff diagnosed cervical degenerative disc disease status post fusion, and cervical radiculitis. He checked a box marked "Yes" in response to the question of whether the diagnosed conditions were caused or aggravated by the accepted October 11, 2006 injury. Dr. Ruoff found appellant permanently disabled from work.

On April 5, 2021 Dr. Ruoff completed a work capacity evaluation (Form OWCP-5c) indicating that appellant was totally disabled.

On April 27, 2021 OWCP referred appellant, along with a statement of accepted facts, a copy of the case record, and a series of questions, to Dr. Chason S. Hayes, a Board-certified orthopedic surgeon, for a second opinion evaluation. It requested that he evaluate whether she continued to have residuals or disability due to the accepted October 11, 2006 employment injury.

In a report dated May 28, 2021, Dr. Hayes related that appellant's current diagnosis related to the accepted injury was failed cervical fusion. He noted her complaints of neck pain and stiffness, headaches, and occasional hand numbness. On physical examination, Dr. Hayes observed cervical tenderness to palpation and range of motion (ROM), 50 percent decreased cervical ROM, no right shoulder tenderness, and no right shoulder swelling. He reported that appellant's objective findings demonstrated a well-healed anterior surgical scar, limited cervical spine ROM, no sign of deformity or scoliosis, normal motor strength, and normal neurological findings. Dr. Hayes opined that the accepted work-related right trapezius shoulder strain had resolved without residuals, but that the accepted right cervical radiculopathy had not resolved. He explained that there were no physical examination findings suggesting the diagnosed right trapezius shoulder strain was still active. Dr. Hayes attributed appellant's right shoulder pain to her cervical spine condition. He noted that her prognosis was poor. Next, Dr. Hayes reported

normal neurological findings and found no significant structural abnormalities or pathology warranting additional treatment. He concluded that appellant was capable of performing her date-of-injury position as a mail carrier with no restrictions. Dr. Hayes indicated that she had adequate time to recover from her surgery and the presence of ongoing pain was not enough medical justification to remain out of work, in the absence of other supporting factors. In an attached Form OWCP-5c, he checked “yes” to the question of whether appellant was capable of performing her usual job without restriction.

On June 17, 2021 OWCP issued a notice proposing to terminate appellant’s wage-loss compensation based on Dr. Hayes’ opinion that she no longer had any employment-related disability due to the October 11, 2006 employment injury. It advised that her medical benefits were not terminated. OWCP afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

In a letter dated July 12, 2021, counsel objected to the proposed termination as there was an unresolved conflict in the medical opinion evidence between Dr, Rouff, appellant’s treating physician, and Dr. Hayes, an OWCP referral physician, on the issue of appellant’s ability to work.

By decision dated July 30, 2021, OWCP terminated appellant’s wage-loss compensation effective July 23, 2021. It noted that her medical benefits would remain open if further treatment was required for her accepted conditions.

On August 25, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review, which was held on December 8, 2021.

By decision dated January 27, 2022, an OWCP hearing representative affirmed the July 30, 2021 decision terminating wage-loss compensation. He found that the weight of the medical opinion evidence rested with the opinion of Dr. Hayes.

Subsequent to the January 27, 2022 decision, counsel submitted a December 16, 2021 report from Dr. Ruoff opining that appellant was totally disabled from work. Dr. Ruoff reviewed Dr. Hayes’ findings and explained that she has had significant C3-4, C5-6, and C6-6 degenerative disc disease for many years. Additionally, he noted that appellant has had persistent and consistent neck pain with radiation, which were related to her accepted condition.

On April 29, 2022 appellant, through counsel, requested reconsideration.

By decision dated July 28, 2022, OWCP denied modification, finding that Dr. Ruoff failed to provide a rationalized medical opinion supported by objective evidence. It found the opinion of Dr. Hayes, that appellant was no longer totally disabled, constituted the weight of the medical opinion evidence.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden of proof to justify modification or termination of benefits.³ Having determined that, an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation benefits, effective July 23, 2021.

OWCP accepted that appellant sustained right trapezius upper arm/shoulder muscle strain and right radiculitis as a result of the October 11, 2006 employment injury. It also authorized a cervical fusion. By decision dated July 30, 2021, OWCP terminated appellant's wage-loss compensation based on the opinion of Dr. Hayes, an OWCP second opinion examiner, who concluded in a March 28, 2021 report that she no longer had any disability due to her accepted conditions.

In his May 28, 2021 report, Dr. Hayes discussed appellant's factual and medical history and noted her complaints of neck pain and stiffness, headaches, and occasional hand numbness. He provided examination findings for her cervical spine and right shoulder. On physical examination, Dr. Hayes observed cervical tenderness to palpation and 50 percent decreased cervical ROM. He diagnosed failed cervical fusion due to the work injury. Dr. Hayes opined that the accepted right trapezius shoulder strain had resolved, but that appellant's radiculitis had not resolved. He concluded that she was no longer disabled.

The Board finds that Dr. Hayes did not provide adequate medical rationale in support of his opinion that appellant was no longer disabled. Dr. Hayes opined that her right trapezius shoulder strain had resolved, but he did not sufficiently discuss the medical findings of record to

³ See *D.W.*, Docket No. 22-0109 (issued May 17, 2022); *M.E.*, Docket No. 20-0877 (issued August 2, 2021); *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).

⁴ *M.D.*, Docket No. 21-0080 (issued August 16, 2022); *J.D.*, Docket No. 18-0958 (issued January 8, 2019); *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁵ See *M.D.*, *id.*; *D.P.*, Docket No. 18-0038 (issued January 4, 2019); *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁶ 20 C.F.R. § 10.5(f); *D.B.*, Docket No. 22-0518 (issued November 28, 2022); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

explain when and/or how the condition had resolved, such that it no longer caused disability.⁷ Rationalized medical evidence must include rationale explaining how the physician reached the conclusion he or she is supporting.⁸ In addition, Dr. Hayes indicated that appellant's right cervical radiculopathy had not resolved, and that her prognosis for this condition was poor, but he offered no rationalized explanation as to when and why it had ceased to cause disability from work.⁹ Furthermore, he diagnosed failed cervical fusion and indicated that she had adequate time to recover from the surgery. Dr. Hayes did not explain that appellant had actually recovered from what he labeled as failed cervical fusion and, ultimately, he did not provide any discussion regarding whether this condition caused any disability. His opinion that she could return, and was capable of working full time in her date-of-injury mail carrier position, was, therefore, of diminished probative value, and insufficient to justify the termination of her wage-loss compensation.¹⁰

The Board, therefore, finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation effective July 23, 2021.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation, effective July 23, 2021.¹¹

⁷ See *C.B.*, Docket No. 20-0629 (issued May 26, 2021); see also *G.G.*, Docket No. 20-0513 (issued January 12, 2021).

⁸ *J.C.*, Docket No. 22-0376 (issued September 20, 2022); *B.B.*, Docket No. 19-1102 (issued November 7, 2019); *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁹ *Id.*

¹⁰ *H.A.*, Docket No. 22-0900 (issued December 5, 2022); *B.M.*, Docket No. 21-0101 (issued December 15, 2021); *S.R.*, Docket No. 19-1229 (issued May 15, 2020); *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008).

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 28, 2022 is reversed.

Issued: April 24, 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