

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

_____)	
D.C., Appellant)	
)	
and)	Docket No. 22-1177
)	Issued: December 6, 2023
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Los Angeles, CA, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 8, 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 the case.

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.*

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 8, 2022, as she no longer had disability or residuals causally related to her accepted June 21, 2003 employment injury.

FACTUAL HISTORY

On June 21, 2003 appellant, then a 32-year-old transportation security screener, filed a traumatic injury claim (Form CA-1) alleging that on that date she felt a sharp tightening sensation in her chest when lifting bags while in the performance of duty. She stopped work on the date of injury and returned to work without restrictions on July 12, 2003. OWCP initially accepted the claim for chest wall strain, resolved, and subsequently expanded the acceptance of the claim to include right shoulder impingement syndrome.³

Appellant stopped work in September 2005 and did not return. OWCP paid her wage-loss compensation for total disability on the supplemental rolls effective September 4, 2005, and on the periodic rolls effective October 2, 2005.

In an attending physician's report (Form CA-20) dated January 3, 2020, Dr. Michael D. Smith, a Board-certified orthopedic surgeon, noted a date of injury of June 21, 2003 and diagnosed cervical and lumbar radiculopathy.

In further form reports dated February 9 and November 5, 2020, Dr. Smith diagnosed cervical radiculopathy, bilateral rotator cuff injuries, and lumbar disc disease, but did not note a date of injury. He advised that appellant remain off work.

In a report dated January 13, 2021, Dr. Smith noted that appellant continued to relate complaints of pain in the neck, right shoulder, and back. He indicated that her last physical examination on November 5, 2020 had revealed tenderness in the right subacromial space and cervical and lumbar regions. Dr. Smith noted a date of injury of February 1, 2005 and diagnosed right rotator cuff tear, cervical strain, and lumbar strain. He opined that appellant was not capable of returning to her preinjury position.

On January 21, 2021 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a series of questions to Dr. Michael J. Einbund, a Board-certified orthopedic surgeon, for a second opinion examination.

In a February 11, 2021 report, Dr. Einbund outlined appellant's history of injuries on June 21 and October 17, 2003 and February 1, 2005 and her subsequent medical treatment. He noted that her current treatment consisted of medications prescribed by Dr. Smith. Dr. Einbund found that appellant currently had no chest wall pain, but that she had complaints of pain in the

³ OWCP assigned the present claim OWCP File No. xxxxxx862. Appellant sustained two subsequent injuries. Under OWCP File No. xxxxxx551, OWCP accepted an October 17, 2003 claim for a sacroiliac strain, and paid appellant wage-loss compensation for partial disability on the supplemental rolls from December 2, 2003 through January 7, 2005. Under OWCP File No. xxxxxx263, it accepted a February 1, 2005 claim for a cervical strain, bilateral shoulder contusions, and a thoracic contusion. OWCP administratively combined the files, with OWCP File No. xxxxxx862 serving as the master file.

neck, shoulders, and lower back, with radiation into her arms and left leg and numbness and tingling in both hands. With regard to the June 21, 2003 claim, he noted that the SOAF indicated that the accepted injuries included chest wall strain, sprain of right shoulder, upper arm, and acromioclavicular (AC) joint, and right shoulder impingement syndrome. Dr. Einbund performed a physical examination of the right shoulder, where he observed diffuse tenderness over the deltoid and trapezius, a slight loss of active range of motion, and a one-centimeter deficit in circumferential measurement of the right upper arm compared to the left. He further noted that appellant did not report any symptoms in the chest, and that examination findings for the right shoulder were non-specific and unreliable. Dr. Einbund diagnosed chest wall strain, resolved; right shoulder and AC sprain, resolved; right shoulder impingement, resolved; left sacroiliac strain, resolved; bilateral shoulder contusion, resolved; neck sprain, resolved; and contusion of the back, resolved. He opined that the diagnosis of right rotator cuff tear was not established as the MRI scan results did not reveal a tear, and that appellant's examination findings were not consistent with a rotator cuff tear. Dr. Einbund further opined that appellant was not suffering from any additional medical conditions, including an aggravation injury, which would be medically connected to the June 21, 2003 employment injury. He noted that there were no residual examination findings attributable to any of appellant's employment injuries, and that she could return to work without restriction, with the exception that she should not lift over 70 pounds due to nonwork-related degenerative disease in the cervical spine.

In form reports dated March 28, May 27, July 9, and September 15, 2021, Dr. Smith diagnosed cervical radiculopathy, bilateral rotator cuff injuries, and lumbar degenerative, but did not reference a date of injury. He advised that appellant remain off work.

In a Form CA-20 dated April 6, 2021, Dr. Smith provided a date of injury of June 21, 2003 and diagnosed an unspecified sprain of sternum and unspecified sprain of the AC joint. He noted that he had not released appellant to return to work, and still was prescribing medication.

On April 7, 2021 Dr. Smith disagreed with Dr. Einbund's opinions regarding the June 21, 2003 injury. He noted that he had been treating appellant since 2005, and believed his "conclusions regarding her medical status best represent her current condition."

In a supplemental report dated October 4, 2021, Dr. Einbund indicated that the changes noted on diagnostic testing of appellant's neck were the result of the normal aging process, and were not traumatic in nature. He advised that the changes would have been present "even absent her incident of injury of September 27, 2005."

In a report dated November 23, 2021, Dr. Smith noted his review of Dr. Einbund's supplemental report and claimed that all diagnostic testing he had recommended for the past 10 years had been denied. He noted that he would render an opinion once all testing had been authorized.

On December 30, 2021 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on the February 22 and October 4, 2021 second examination reports from Dr. Einbund. It afforded him 30 days to submit additional evidence or argument challenging the proposed termination.

In a report dated January 14, 2022, Dr. Smith reiterated that he disagreed with Dr. Einbund's opinions. He outlined the results of May 31, 2005 MRI scans of the left shoulder

and lower back and May 21, 2019 MRI scans of the cervical spine and shoulders. Dr. Smith noted physical examination findings of “restricted motion with pain,” and opined that “the conditions are still present and the result of the work injury.” He again requested additional diagnostic testing relative to the left shoulder and cervical and lumbar areas of the spine.

By decision dated February 8, 2022, OWCP terminated appellant’s wage-loss compensation and medical benefits, effective that date, finding that the medical evidence of record established that she no longer had any residuals related to her accepted work-related medical conditions or continued disability from work as a result of the June 21, 2003 employment injury. The weight of the medical evidence was accorded to the opinion of the second opinion physician, Dr. Einbund.

On February 16, 2022 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review, which was held on May 16, 2022. No additional evidence was received.

By decision dated July 28, 2022, OWCP’s hearing representative affirmed the February 8, 2022 decision.

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.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 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.⁸

⁴ *R.G.*, Docket No. 22-0165 (issued August 11, 2022); *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).

⁵ *See R.L.*, Docket No. 22-1175 (issued May 11, 2023); *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).

⁶ *R.L., id.*; *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *See A.M.*, Docket No. 22-0300 (issued April 10, 2023); *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361 (1990).

⁸ *See A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 8, 2022, because she no longer had disability or residuals causally related to her accepted June 21, 2003 employment injury.

In his February 11, 2021 narrative report, OWCP's second opinion physician, Dr. Einbund, discussed appellant's factual and medical history, and reported the findings of the physical examination he conducted on that date. He concluded that appellant had no residuals of the accepted June 21, 2003 right shoulder impingement or sprains of the chest wall, right shoulder AC joint, or right upper arm. Dr. Einbund noted that a diagnosis of rotator cuff tear was not medically supported, and that "the exam[ination] findings today are benign and not consistent with rotator cuff tear." He explained that appellant did not demonstrate objective residuals of the June 21, 2003 employment injury, had not reported symptoms for the chest, and that the examination findings for the right shoulder were nonspecific and unreliable. Dr. Einbund opined that there was no need for ongoing medical treatment, and that she was able to perform all strength levels with the exception of heavy or very heavy work, which restriction was due to nonoccupational cervical spine pathology. In an October 4, 2021 supplemental report, he clarified that appellant's cervical changes resulted from the natural progression of underlying degenerative changes in the cervical spine.

Dr. Einbund based his opinion on a proper factual and medical history and physical examination findings, and provided medical rationale for his opinion. His opinion that appellant could return to her date-of-injury position was based on an accurate description of appellant's date-of-injury job duties, the medical evidence of record, and his examination findings regarding appellant's disability status causally related to the June 21, 2003 accepted conditions. Dr. Einbund further opined that no additional treatment was necessary for the accepted employment injuries. The Board finds that his opinion is sufficiently probative, rationalized, and based upon a prior factual background, and thus represents the weight of the evidence.⁹

In a form report dated April 6, 2021, Dr. Smith noted a date of injury of June 21, 2003 and diagnosed an unspecified sprain of sternum and unspecified sprain of the AC joint. He indicated that he had not released appellant to return to work and was still prescribing medication. In a letter dated April 7, 2021, Dr. Smith disagreed with Dr. Einbund's opinions regarding the June 21, 2003 injury, and indicated that he had treated appellant since 2005 and believed his "conclusions regarding her medical status best represent her current condition." However, although he attributed appellant's current condition to the June 21, 2003 employment injury, Dr. Smith provided no medical rationale in his April 6 and 7, 2021 reports. The Board has held that medical evidence that states a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰ In his reports dated February 9 and November 5, 2020 and September 15, 2021, Dr. Smith diagnosed cervical radiculopathy, bilateral rotator cuff injuries, and lumbar disease and recommended appellant remain off work, but did not reference a date of injury. In his report dated

⁹ *R.L.*, Docket No. 22-1175 (issued May 11, 2023); *J.T.*, Docket No. 20-1470 (issued October 8, 2021); *S.M.*, Docket No. 18-0673 (issued January 25, 2019).

¹⁰ *S.S.*, Docket No. 21-1140 (issued June 29, 2022); *P.J.*, Docket No. 18-1738 (issued May 17, 2019); *D.H.*, Docket No. 17-1913 (issued December 13, 2018).

November 23, 2021, he declined to offer an opinion without further diagnostic testing. On January 14, 2022 Dr. Smith provided a date of injury of February 1, 2005 and indicated that he disagreed with Dr. Einbund’s opinions, noted only a generalized physical examination finding of “restricted motion with pain,” and opined that “the conditions are still present and the result of the work injury.” However, none of these reports provided an opinion on whether appellant still had residuals or disability due to her accepted June 21, 2003 employment conditions.¹¹ Dr. Smith’s reports are, therefore, insufficient to overcome the weight accorded to Dr. Einbund or create a conflict of medical opinion.¹²

As the evidence of record is insufficient to overcome the weight accorded to Dr. Einbund, or to create a conflict in medical opinion, the Board finds that OWCP has met its burden of proof.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant’s wage-loss compensation and medical benefits, effective February 8, 2022, as she no longer had disability or residuals causally related to her accepted June 21, 2003 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2022 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: December 6, 2023
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

¹¹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² See *M.D.*, Docket No. 21-0080 (issued August 16, 2022).