

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

K.C., Appellant	)	
	)	
and	)	Docket No. 23-0526
	)	Issued: December 22, 2023
U.S. POSTAL SERVICE, MAYWOOD POST	)	
OFFICE, Maywood, IL, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On March 2, 2023 appellant filed a timely appeal from a February 23, 2023 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.<sup>2</sup>

**ISSUE**

The issue is whether OWCP has met its burden of proof to establish that appellant's accepted lumbar sprain had resolved, effective February 3, 2023.

---

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

<sup>2</sup> The Board notes that following the issuance of the February 23, 2023 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 additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On June 27, 2013 appellant, then a 45-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that the repetitive duties of his position, which involved standing, lifting, bending, carrying, walking, driving, and standing with heavy loads, caused pressure to his left hip and lower back and abnormal sensations in his legs, hip, and back. He first became aware of his conditions on September 29, 2012 and realized their relationship to his federal employment on April 10, 2013. Appellant stopped work on September 29, 2012. OWCP initially accepted the claim for lumbar sprain. By decision dated February 28, 2020, it expanded the acceptance of appellant's claim to include temporary aggravation of degenerative disc disease, lumbar region; temporary aggravation of unilateral primary osteoarthritis, left hip; and temporary aggravation of avascular necrosis, left hip. By decision dated August 14, 2020, OWCP accepted the additional condition of thrombosis of left femoral vein. On September 15, 2022 appellant was involved in a nonwork-related motor vehicle accident and placed off work. By decision dated December 12, 2022, OWCP accepted the additional condition of bilateral pulmonary embolism. It paid appellant intermittent wage-loss compensation on the supplemental rolls as of October 21, 2015, on the periodic rolls from July 19, 2020 to February 27, 2021, and again on the supplemental rolls as of February 28, 2021.

On January 14, 2023 OWCP referred appellant along with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. George K. Myo, an orthopedic surgeon, for a second opinion evaluation to determine whether appellant's accepted work-related condition(s) and residuals had resolved and whether he was capable of returning to his date-of-injury mail carrier position. In a January 20, 2023 report, Dr. Myo reviewed the SOAF and the medical record and reported his examination findings. He diagnosed low back pain and right and left hip pain with weakness. Dr. Myo opined that appellant's current left hip pain was no longer related to the accepted temporary aggravation of the unilateral primary osteoarthritis of the left hip and the accepted temporary aggravation of the avascular necrosis of the left hip because both conditions resolved within three months of the initial injury in 2012. He further opined that the right hip pain and weakness had no relation to the accepted conditions or employment factors. Dr. Myo also opined that appellant's current low back pain was not related to the accepted lumbar sprain because that condition should have resolved shortly after or within three months of the 2012 employment injury. He noted that he would defer an opinion regarding the current status of the accepted conditions of bilateral pulmonary embolism, right leg DVT, and thrombosis of the left femoral vein to an appropriate specialist.

Dr. Myo indicated that the September 29, 2012 work injury occurred when appellant was carrying mail and walking upstairs when, after three or four stairs, he felt severe pain. He explained that this was an extremely low energy injury which would have only caused the temporary aggravations and the strains described in the SOAF. Dr. Myo indicated that those diagnoses were self-limiting over a period of a few months and would not cause any current symptoms. He explained that the September 29, 2012 work injury aggravated a preexisting low back pain and that the temporary aggravation had now returned to preinjury status. Dr. Myo further opined that the accepted condition of temporary aggravation left hip unilateral primary osteoarthritis and temporary aggravation of left hip avascular necrosis resolved within three months of the September 29, 2012 employment injury. He noted that the right and left hip pain was due to a stent. Dr. Myo deferred to a Board-certified hematology/oncology or

vascular/cardiovascular surgeon for questions related to appellant's cardiovascular or vascular issues. He reiterated that the September 29, 2012 work injury was an extremely low energy stair incident which would not have caused any permanent aggravation to the preexisting avascular necrosis and osteoarthritis as such conditions were temporary aggravations which resolved in time, with the current pain due the stent. Dr. Myo explained that based on his information about appellant's line of work and employment factors, appellant had a temporary aggravation of his underlying conditions from the September 29, 2012 work injury. He also opined that the accepted temporary aggravation of the intervertebral disc degeneration, lumbar spine, resolved within three months of the work incident, explaining that the minor energy description of the work incident indicated only three months maximum of temporary aggravation.

Dr. Myo concluded that the accepted conditions of temporary aggravation of intervertebral disc degeneration, lumbar region; temporary aggravation of unilateral primary osteoarthritis, left hip; temporary aggravation of avascular necrosis, left hip; and sprain of back, lumbar region had all resolved within - three months of the September 29, 2012 employment injury. He also concluded that appellant's current low back -- and bilateral hip pain were likely related to his September 2022 motor vehicle accident. Dr. Myo opined that these conditions have reached MMI, and based on clinical presentation, appellant was capable of returning to his date-of-injury letter carrier position and performing his current job as a lobby greeter<sup>3</sup> as there was no limitation in his range of motion and strength and he had complete control of his musculoskeletal system to perform complex tasks. He further opined that appellant should immediately, functionally be weaned off medications in order to facilitate his return to gainful employment.

On February 9, 2023 OWCP requested that appellant's physician, Dr. Michael A. Steingart, D.O., an osteopath and sports medicine specialist, respond to Dr. Myo's January 20, 2023 opinion addressing whether appellant had reached MMI, whether the accepted conditions had resolved, and appellant's work capacity. It afforded him 30 days to respond.

On February 15, 2023 OWCP requested a supplemental report from Dr. Myo providing detailed rationale to support his MMI determination and opinion that the accepted conditions or injuries would not have caused permanent or long-term damage.

By decision dated February 23, 2023, OWCP expanded the accepted conditions to include other intervertebral disc degeneration, lumbar region; unilateral primary osteoarthritis, left hip and other osteonecrosis, left femur; acute embolism and thrombosis of left femoral vein; other pulmonary embolism without acute cor pulmonale; acute embolism and thrombosis of unspecified deep veins of right lower extremity; and sprain of back, lumbar region (resolved as of February 3, 2023). Regarding the accepted condition of resolved back sprain, it afforded the weight of the medical opinion evidence to Dr. Myo's opinion that this condition had resolved before the September 29, 2012 employment injury.

---

<sup>3</sup> Dr. Myo noted that on August 5, 2017 appellant was reassigned from Illinois to Arizona and placed in another custodian craft position, but he never worked as a custodian. Rather, he performed modified duties as a lobby director with restrictions based on his work limitations, up to 33 hours per week.

## LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of an employee's compensation benefits.<sup>4</sup> It may not terminate compensation without establishing that the disability ceased, or that it was no longer related to the employment injury.<sup>5</sup> OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>7</sup> To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.<sup>8</sup>

Where OWCP has accepted a resolved aggravation of a preexisting condition, the date by which the condition resolved must be established by probative medical evidence.<sup>9</sup>

## ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to establish that appellant's accepted lumbar sprain had resolved, effective February 3, 2023.

In his January 20, 2023 report, Dr. Myo noted his review of the SOAF and the medical record, and related appellant's physical examination findings. He opined that appellant's current low back pain was not causally related to the accepted lumbar sprain because that condition had resolved within three months of the accepted September 29, 2012 employment injury and long before his nonwork-related September 2022 motor vehicle accident. Dr. Myo indicated that the accepted lumbar condition had reached preinjury status. He noted that the employment-related injury was an extremely low energy injury which would have only caused the accepted temporary aggravations of his prior lumbar and bilateral hip conditions and the accepted lumbar sprain. Dr. Myo concluded that the accepted conditions had all reached MMI and, based on clinical

---

<sup>4</sup> *A.M.*, Docket No. 18-1243 (issued October 7, 2019); *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001); *Alice J. Tysinger*, 51 ECAB 638, 645 (2000).

<sup>5</sup> *S.P.*, Docket No. 19-0196 (issued June 24, 2020); *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).

<sup>6</sup> *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>7</sup> *S.P.*, *supra* note 5; *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

<sup>8</sup> *D.G.*, *supra* note 6; *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

<sup>9</sup> *C.P.*, Docket No. 21-1120 (issued January 27, 2023); *J.C.*, Docket No. 13-1200 (issued November 1, 2013); *F.M.*, Docket No. 12-590 (issued September 24, 2012); *J.D.*, Docket No. 11-131 (issued December 21, 2011); and *Daniel A. Davis*, 39 ECAB 151 (1987)

presentation, appellant was capable of returning to his date-of-injury letter carrier position and current job as a lobby greeter without restrictions.

Dr. Myo's opinion that the accepted lumbar sprain had resolved within three months of the September 2012 employment injury and returned to preinjury status was conclusionary in nature. He failed to explain how appellant's physical examination findings and medical course three months following the September 2012 employment injury supported this conclusion.<sup>10</sup> On February 9, 2023 OWCP requested that appellant's physician, Dr. Steingart, respond to Dr. Myo's January 20, 2023 opinion. Further, on February 15, 2023 OWCP requested that Dr. Myo provide a supplemental opinion, with further medical rationale supporting his opinion that appellant's accepted condition had resolved. OWCP granted both physicians 30 days to respond. However, OWCP did not receive a response from these physicians prior to prematurely issuing its February 23, 2023 decision.

For these reasons, the Board finds that OWCP failed to meet its burden of proof to establish that the accepted lumbar sprain had resolved, effective February 3, 2023.

### **CONCLUSION**

The Board finds that OWCP failed to meet its burden of proof to establish that appellant's accepted lumbar sprain had resolved, effective February 3, 2023.

---

<sup>10</sup> *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Roger Dingess*, 47 ECAB 123 (1995).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 23, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 22, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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