

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

P.B., Appellant

and

**SOCIAL SECURITY ADMINISTRATION,
DISTRICT OFFICE, Brooklyn, NY, Employer**

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**Docket No. 21-0894
Issued: February 8, 2023**

Appearances:

Paul Kalker, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 3, 2021 appellant, through counsel, filed a timely appeal from a March 30, 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.

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 25, 2020, as she no longer had

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.*

disability or residuals causally related to her June 26, 2008 employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals on or after July 25, 2020 causally related to her accepted June 26, 2008 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 30, 2008 appellant, then a 50-year-old claims representative, filed a traumatic injury claim (Form CA-1) alleging that, on June 26, 2008, she injured her left knee, right elbow, upper back, and neck when she attempted to sit down in her chair which slid backward and caused her to fall and hit the side of a desk while in the performance of duty. She stopped work on June 27, 2008 and returned to part-time work at the employing establishment on September 9, 2008. OWCP initially accepted appellant's claim for sprains of the neck; back, lumbar region; right shoulder and upper arm; and unspecified sites of the left knee and leg. It later expanded the acceptance of the claim to include derangement of the left medial meniscus. By decision dated June 17, 2009, OWCP accepted that appellant sustained a recurrence of disability on June 3, 2009 based on her OWCP-authorized left knee surgery. It paid her wage-loss compensation on the periodic rolls commencing June 7, 2009.⁴

By decision dated May 6, 2011, OWCP terminated appellant's wage-loss compensation and entitlement to a schedule award, effective May 8, 2011, as she had refused an offer of suitable work pursuant to 5 U.S.C. § 8106(c)(2). Appellant appealed to the Board and by decision dated January 9, 2012, the Board reversed the May 6, 2011 termination decision, finding that the reports of Dr. Robert Meyerson, a Board-certified orthopedic surgeon and an impartial medical specialist, were insufficient to establish that appellant's accepted employment conditions no longer caused disability.⁵

OWCP received an October 8, 2019 medical report and doctor's progress report from Dr. Stephen Horowitz, an attending Board-certified physiatrist and pain medicine physician. Dr. Horowitz noted appellant's history on June 26, 2008 and her current complaint of low back pain. He discussed examination findings and diagnosed lumbar radiculopathy, lumbar spondylosis without myelopathy or radiculopathy, and lumbar myositis, unspecified site. Dr. Horowitz opined

³ Docket No. 11-1384 (issued January 9, 2012).

⁴ By decision dated May 6, 2011, OWCP terminated appellant's wage-loss compensation and entitlement to a schedule award, effective May 8, 2011, as she had refused an offer of suitable work pursuant to 5 U.S.C. § 8106(c)(2). Appellant appealed to the Board and by decision dated January 9, 2012, the Board reversed the May 6, 2011 termination decision, finding that the reports of Dr. Robert Meyerson, a Board-certified orthopedic surgeon and an impartial medical specialist, were insufficient to establish that appellant's accepted employment conditions no longer caused disability. *Id.*

⁵ *Id.*

that the diagnosed conditions were caused by the June 26, 2008 employment injury. He further opined that appellant was unable to return to work due to pain.

On December 23, 2019 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second-opinion evaluation regarding the status of her June 26, 2008 employment injury.

In a February 12, 2020 medical report, Dr. Sultan noted his review of the SOAF and the medical record. He described the June 26, 2008 employment injury and noted appellant's current complaints of intermittent low back pain that traveled down to her right calf. Examination of the cervical spine revealed a head that was normally centered on level shoulders. The cervical curvature was well preserved. There was no active paracervical muscle spasm and no trigger points on palpation over the right and left trapezius musculature. Dr. Sultan provided normal range of motion (ROM) measurements for the cervical spine. Sensory testing of both upper extremities was intact. Grip strength was strong on both sides and pinch mechanism was firm bilaterally. Biceps and triceps reflexes and radial reflexes were symmetrically dull. An axial compression test was negative.

Examination of appellant's right shoulder, by Dr. Sultan, revealed no evidence of any localized swelling, deformity, or discoloration. There were no complaints on palpation over the acromioclavicular joint or long head of the biceps tendon. Dr. Sultan detected no deltoid muscle atrophy when compared to the opposite side. He reported normal ROM measurements for the right and left shoulders. Impingement, drop arm, and Hawkins' test results were negative.

Upon examination of appellant's thoracolumbar spine, Dr. Sultan noted that it was normally aligned. The pelvis was not tilted and lordotic curvature was maintained. There was no active parathoracic or paralumbar muscle spasm. Sacroiliac joints were nontender to palpation. Heel and toe standing was unimpaired and a Trendelenburg test was negative on both sides. ROM measurements were normal. In the supine position, a straight leg raising test was negative bilaterally. Sensory testing of both lower extremities was intact. Big toe extension was strong bilaterally. A Patrick test was negative bilaterally. Knee jerk and ankle reflexes were symmetrically dull. Plantar reflexes were down going.

Examination of appellant's left knee revealed no localized swelling, deformity, or discoloration. The left knee anterior arthroscopic puncture scars were barely visible. The left knee patella was mobile. Stress testing of the right knee revealed intact collateral and cruciate ligaments. A patellofemoral compression test was negative and there was no abnormal patellofemoral crepitus during motion testing. The ROM measurement for the left knee extension was normal and flexion was normal with limitations secondary to appellant's size. There were equal ROM findings on the right side. Spring and McMurray tests were negative. Appellant had no complaints on palpation over the medial or lateral joint line. The left knee measured 17 inches in circumference with equal findings noted on the right side. The left distal thigh measured 21 inches in circumference with equal findings noted on the right side. Dr. Sultan observed ambulating without external support and a steady walking pattern without any visible signs of antalgia.

Dr. Sultan opined that appellant no longer suffered from any of her accepted employment conditions or disability due to these conditions based on his examination findings. He advised that the accepted conditions had healed sufficiently such that she could resume full-time full-duty work. Dr. Sultan noted that appellant had a thoracolumbar spine sprain/strain that had resolved. He related that this condition should be accepted as causally related to her June 26, 2008 employment injury. Dr. Sultan noted that the medical record and his examination findings did not support that appellant had a preexisting condition. There was no clinical evidence that she suffered an aggravation, precipitation, or acceleration of a preexisting condition. Dr. Sultan maintained that appellant's prognosis was favorable and opined that no further medical treatment was needed. He concluded that she had reached maximum medical improvement.

In an April 1, 2020 letter, OWCP noted Dr. Horowitz' diagnoses of lumbar radiculopathy, lumbar spondylosis, and myositis and requested that Dr. Sultan explain whether his examination findings supported these diagnoses and the expansion of the acceptance of appellant's claim.

In response, Dr. Sultan submitted an addendum report dated May 22, 2020 in which he opined that the acceptance of appellant's claim should be expanded to include the diagnoses of lumbar radiculopathy, lumbar spondylolysis, and myositis. He noted that these diagnosed conditions may have been temporarily aggravated by the June 26, 2008 employment injury. Dr. Sultan noted, however, that these conditions were in remission and no longer active. He reiterated his prior opinion that appellant was no longer disabled or required further medical treatment due to her accepted employment injury.

On June 2, 2020 OWCP again expanded acceptance of appellant's claim to include temporary aggravation of lumbar radiculopathy and temporary aggravation of lumbar spondylosis with myelopathy and myositis.

By notice dated June 10, 2020, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Sultan's opinion that the accepted conditions had ceased without residuals or disability. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

In a June 15, 2020 response to OWCP's notice, appellant, through counsel, disagreed with the proposed termination.

OWCP subsequently received a June 16, 2020 report by Dr. Katherine Migliore, an orthopedic surgeon. Dr. Migliore noted a history of the June 26, 2008 employment injury and appellant's current complaint of low back pain. She provided examination findings and diagnosed lumbar radiculopathy, lumbar spondylosis with myelopathy, and myositis.

By decision dated July 24, 2020, OWCP finalized the proposed notice of termination of appellant's wage-loss compensation and medical benefits, effective July 25, 2020, finding that the medical evidence submitted was insufficient to outweigh Dr. Sultan's second opinion.

OWCP, thereafter, received an August 12, 2020 left knee x-ray report by Dr. Michael Green, a Board-certified diagnostic radiologist. Dr. Green provided an impression of mild osteoarthritis that was most prominent within the medial and patellofemoral compartments.

OWCP also received additional reports by Dr. Horowitz. In a September 4, 2020 report, Dr. Horowitz reiterated appellant's history of injury and her complaint of low back pain. He reported examination findings and reiterated his prior diagnoses of the accepted lumbar conditions. Dr. Horowitz advised that appellant's injuries, current disability, and need for treatment were causally related to her June 2008 employment injury.

In a November 20, 2020 procedure note, Dr. Horowitz indicated that appellant underwent epidural steroid and trigger point injections to treat her accepted diagnosis of lumbar radiculopathy and additional diagnosis of myofascial pain.

On January 4, 2021 appellant, through counsel, requested reconsideration of the July 24, 2020 termination decision and submitted an additional report dated August 11, 2020 from Dr. Horowitz. Dr. Horowitz restated a history of appellant's injury and his own treatment of appellant. He noted a review of medical records, including Dr. Sultan's reports. Dr. Horowitz discussed examination findings and provided assessments of lumbago, lumbar disc bulge at L4-5, and lumbar disc herniation at L3-4, and L5-S1. He disagreed with Dr. Sultan's normal physical examination findings. Dr. Horowitz indicated that his examination revealed positive findings, including a positive facet loading and positive straight leg raising along with decreased and restricted ROM, which indicated real, organic anatomical dysfunction. He maintained that these findings were consistent with lumbar spine MRI scan findings. Dr. Horowitz opined that the June 26, 2008 employment injury was responsible for appellant's lumbar pain. He explained that the stress that occurred to her spinal column at the time of the fall resulted in the vertebrae to shift out of normal alignment causing multilevel disc bulge in her lumbar spine. The physical trauma appellant suffered during the accident caused the disc to rupture and impinge on the spinal nerve causing her current radicular pain. Dr. Horowitz noted her treatment plan. He advised that appellant was permanently partially disabled due to her continued lumbar pain and significant loss of ROM. Dr. Horowitz restated his prior opinion that her injuries, disability, and need for further treatment were causally related to June 26, 2008 employment injury.

OWCP, by decision dated March 30, 2021, denied modification of its July 24, 2020 termination 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.⁶ 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

⁶ See *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *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).

the employment.⁷ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁹ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.¹⁰

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 July 25, 2020, as she no longer had disability or residuals causally related to her June 26, 2008 employment injury.

OWCP referred appellant to Dr. Sultan for a second-opinion evaluation to determine the status of her accepted conditions and work capacity. In his February 12 and May 22, 2020 reports, Dr. Sultan indicated that appellant's physical examination revealed no objective findings of the accepted conditions. He opined that the accepted work-related conditions had resolved, that appellant could return to full-time full-duty work, and that there was no need for further medical treatment.

The Board finds that OWCP properly accorded the weight of the medical evidence to Dr. Sultan. Dr. Sultan based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion. He provided a well-rationalized opinion based on medical evidence regarding the accepted conditions causally related to appellant's June 26, 2008 employment injury. Accordingly, OWCP properly relied on Dr. Sultan's second-opinion report in terminating her wage-loss compensation and medical benefits.¹¹

The remaining evidence submitted prior to OWCP's termination of appellant's compensation is insufficient to overcome the weight afforded to Dr. Sultan as the second-opinion physician.

Appellant submitted an October 8, 2019 doctor's progress report from Dr. Horowitz describing the accepted June 26, 2008 employment injury and providing examination findings.

⁷ 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).

⁸ *K.W.*, Docket No. 19-1224 (issued November 15, 2019); see *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁹ *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

¹⁰ *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

¹¹ See *E.S.*, Docket No. 20-0673 (issued January 11, 2021); *K.W.*, *supra* note 8; *N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

Dr. Horowitz diagnosed the accepted conditions of lumbar radiculopathy, lumbar spondylosis without myelopathy or radiculopathy, and lumbar myositis. Additionally, he opined that appellant was unable to return to work due to pain. However, Dr. Horowitz failed to offer an opinion addressing why appellant continued to have residuals or disability for work due to the accepted conditions from the June 26, 2008 employment injury. The Board finds that his conclusory opinion was insufficient to establish that appellant continued to have disability and/or residuals causally related to her accepted employment injury.¹²

Similarly, Dr. Migliore's June 16, 2020 report, in which she described the June 26, 2008 employment injury, provided examination findings, and diagnosed the accepted conditions of lumbar radiculopathy, lumbar spondylosis with myelopathy, and lumbar myositis, did not offer an opinion addressing why appellant continued to have residuals or disability causally related to the June 26, 2008 employment injury. Thus, her report is insufficient overcome the weight afforded to Dr. Sultan's opinion.¹³

The Board finds, therefore, that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective July 25, 2020.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates a claimant's compensation benefits, the burden shifts to appellant to establish continuing disability or residuals after that date causally related to the accepted injury.¹⁴ 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.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing disability or residuals on or after July 25, 2020, causally related to her accepted June 26, 2008 employment injury.

Subsequent to the termination of her wage-loss compensation and medical benefits, appellant submitted additional reports from Dr. Horowitz. In a September 4, 2020 report, Dr. Horowitz diagnosed the accepted conditions of lumbar radiculopathy, lumbar spondylosis without myelopathy or radiculopathy, and other myositis in an unspecified site, and found that appellant's continuing disability and need for further medical treatment were causally related to the June 26, 2008 employment injury. However, he did not provide medical rationale explaining

¹² See V.W., Docket No. 20-0693 (issued June 2, 2021); E.S., *id.*

¹³ *Id.*

¹⁴ See V.W., *supra* note 12; D.G., Docket No. 19-1259 (issued January 29, 2020); S.M., Docket No. 18-0673 (issued January 25, 2019); J.R., Docket No. 17-1352 (issued August 13, 2018).

¹⁵ *Id.*

the basis of his conclusory opinion and therefore his opinion is of diminished probative value.¹⁶ Thus, the Board finds that Dr. Horowitz's report is insufficient to establish appellant's burden of proof.

In an August 11, 2020 report, Dr. Horowitz restated a history of appellant's injury and his own treatment of appellant. He reviewed medical records, including Dr. Sultan's reports. Dr. Horowitz reported examination findings and provided assessments of lumbago, lumbar disc bulge at L4-5, and lumbar disc herniation at L3-4, and L5-S1. He opined that the June 26, 2008 employment injury was responsible for appellant's lumbar pain, permanent partial disability, and need for further medical treatment. Dr. Horowitz also disagreed with Dr. Sultan's normal physical examination findings as his physical examination revealed positive findings of a positive facet loading and positive straight leg raising along with decreased and restricted ROM, which indicated real, organic anatomical dysfunction. While Dr. Horowitz explained how appellant's lumbar pain was caused by the June 26, 2008 employment injury, the Board notes that pain does not constitute the basis for payment of compensation, as pain is a symptom rather than a specific medical diagnosis.¹⁷ Moreover, OWCP has only accepted appellant's claim for sprains of the neck, back, lumbar region, right shoulder and upper arm, unspecified site, and left knee and leg, unspecified sites; derangement of the left medial meniscus; temporary aggravation of lumbar radiculopathy, lumbar spondylosis with myelopathy; and myositis. Dr. Horowitz did not specifically address how any continuing disability was causally related to the accepted employment-related conditions.¹⁸ Thus, for these reasons his opinion is insufficient to meet appellant's burden of proof.

Although Dr. Horowitz' remaining November 20, 2020 procedure note indicated that he treated appellant's accepted diagnosis of lumbar radiculopathy with epidural steroid and trigger point injections, he did not explain how the reported treatment was medically necessary for treatment of the effects of an employment-related condition.¹⁹

Appellant also submitted an August 12, 2020 x-ray report from Dr. Green which addressed her left knee conditions. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address causal relationship.²⁰ For this reason, this evidence is not sufficient to meet her burden of proof.

The Board, thus, finds that appellant has not met her burden of proof to establish continuing disability or residuals due to her accepted employment conditions.

¹⁶ See *supra* note 12.

¹⁷ *L.G.*, Docket No. 19-0142 (issued August 8, 2019).

¹⁸ See *M.L.*, Docket No. 20-1682 (issued June 24, 2021); *K.E.*, Docket No. 17-1216 (issued February 22, 2018).

¹⁹ *E.U.*, Docket No. 13-1853 (issued January 16, 2014).

²⁰ See *J.O.*, Docket No. 19-0850 (issued October 22, 2020); *L.K.*, Docket No. 19-0313 (issued January 15, 2020); *O.W.*, Docket No. 19-0316 (issued June 25, 2019); *J.F.*, Docket No. 17-1716 (issued March 1, 2018); *G.G.*, Docket No. 17-0537 (issued July 20, 2017).

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 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 and medical benefits, effective July 25, 2020, as she no longer had disability or residuals causally related to her accepted June 26, 2008 employment injury. The Board further finds that appellant has not met her burden of proof to establish continuing disability or residuals on or after July 25, 2020, causally related to her accepted June 26, 2008 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 8, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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