

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

A.T., Appellant

and

**U.S. POSTAL SERVICE, QUEENS VEHICLE
PLANT FACILITY, Jamaica, NY, Employer**

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**Docket No. 22-0716
Issued: February 24, 2023**

Appearances:

*Thomas S. Harkins, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On April 12, 2022 appellant, through counsel, filed a timely appeal from December 16, 2021 and March 23, 2022 merit decisions 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.

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 appellant has met his burden of proof to establish continuing disability or residuals on or after December 7, 2018, causally related to the accepted March 24, 2017 employment injury.

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference.³ The relevant facts are set forth below.

On March 24, 2017 appellant, then a 50-year-old auto technician mechanic, filed a traumatic injury claim (Form CA-1) alleging that on that day he injured his knees, shin, and chest when he slipped and struck the bumper of a container he was loading into his vehicle while in the performance of duty. He stopped work on March 27, 2017. On July 12, 2017 OWCP accepted appellant's claim for abrasion and contusion of the left knee.⁴

On October 22, 2018 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on the April 30, June 1, and July 26, 2018 medical reports of Dr. Andrew E. Farber, an osteopathic Board-certified orthopedic surgeon serving as a second opinion physician, who opined that the accepted conditions had resolved without residuals or disability. It afforded appellant 30 days to submit additional evidence or argument challenging the proposed termination. Appellant submitted additional medical evidence.

OWCP, by decision dated December 6, 2018, finalized its termination of appellant's wage-loss and medical compensation benefits, effective December 7, 2018. It found that the weight of the medical evidence rested with the reports of Dr. Farber and established that appellant had no continuing residuals or disability from work causally related to his March 24, 2017 employment injury.

On December 21, 2018 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated July 22, 2019, OWCP's hearing representative affirmed the December 6, 2018 termination decision, finding that the weight of the medical evidence rested with the opinion of Dr. Farber and established that appellant had no continuing employment-related residuals or disability.

³ Docket No. 19-0294 (issued May 29, 2019); Docket No. 20-0334 (issued October 8, 2020).

⁴ By separate decision dated July 13, 2017, OWCP denied expansion of the acceptance of appellant's claim to include bilateral knee osteoarthritis, bilateral knee tear of the meniscus, right knee rupture of anterior cruciate ligament, and anterior cruciate ligament sprain of the bilateral knees.

On November 29, 2019 appellant, through his then-counsel, appealed to the Board. By decision dated October 8, 2020, the Board affirmed the July 22, 2019 termination decision,⁵ finding that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 7, 2018. The Board found that OWCP properly accorded the weight of the medical evidence to Dr. Farber, as his opinion was based on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion. The Board further found that appellant had not met his burden of proof to establish continuing disability or residuals on or after December 7, 2018.

On October 3, 2021 appellant, through counsel, requested reconsideration.

By decision dated December 16, 2021, OWCP denied modification of its termination decision, again finding that Dr. Farber's opinion represented the weight of the medical evidence.

On March 2, 2022 appellant, through counsel, requested reconsideration.

In a January 4, 2021 report, Dr. Touliopoulos, Board-certified in orthopedic sports medicine, noted a history of the March 24, 2017 employment injury and appellant's medical treatment. He discussed findings on physical and x-ray examination. Dr. Touliopoulos indicated that appellant developed the following conditions status post his accepted employment injury: (1) left knee meniscal and chondral injuries requiring total knee arthroplasty and revision total knee arthroplasty with residual patellofemoral symptoms/arthrofibrosis; (2) right knee ACL tear, medial meniscal tear, chondral injuries and aggravation and progression of underlying degenerative joint disease; (3) right leg injury (fascial defect versus posttraumatic fibroma); (4) consequential right shoulder, rule out rotator cuff tendon tear; and (5) consequential left ankle sprain, rule out further internal derangement. He recommended a right knee total arthroplasty. Dr. Touliopoulos opined that appellant remained totally disabled from his previous employment due to his bilateral knee conditions.

By decision dated March 23, 2022, OWCP denied modification of its December 16, 2021 decision.

LEGAL PRECEDENT

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing disability or residuals after that date, causally related to the accepted employment injury.⁶ 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.⁷

⁵ *Id.* at Docket No. 20-0334.

⁶ See *M.D., id.; C.P.*, Docket No. 21-0173 (issued March 23, 2022); *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).

⁷ *Id.*

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish continuing disability or residuals on or after December 7, 2018, causally related to the accepted March 24, 2017 employment injury.

Preliminarily, the Board notes that findings made in prior Board decisions are *res judicata*, absent any further review by OWCP under section 8128 of FECA. It is, therefore, unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's July 22, 2019 decision as the Board considered that evidence in its October 8, 2020 decision.⁸

Following OWCP's July 22, 2019 decision, appellant submitted a January 4, 2021 report from Dr. Touliopoulos. Dr. Touliopoulos opined that she sustained left knee meniscal and chondral injuries requiring total knee arthroplasty and revision total knee arthroplasty with residual patellofemoral symptoms/arthrofibrosis; right knee ACL tear, medial meniscal tear, chondral injuries and aggravation and progression of underlying degenerative joint disease; right leg injury (fascial defect versus posttraumatic fibroma); right shoulder, rule out rotator cuff tendon tear; and left ankle sprain, rule out further internal derangement. He also opined that appellant continued total disability from work was causally related to his bilateral knee conditions. However, Dr. Touliopoulos did not explain with rationale how any continuing conditions and disability were causally related to the March 24, 2017 accepted employment injury. The Board has held that a medical report is of limited probative value if it contains a medical opinion which is unsupported by medical rationale.⁹

As the medical evidence of record is insufficient to establish continuing disability or residuals on or after December 7, 2018, causally related to the accepted March 24, 2017 employment injury, the Board finds that appellant 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 appellant has not met his burden of proof to establish continuing disability or residuals on or after December 7, 2018, causally related to the accepted March 24, 2017 employment injury.

⁸ *G.W.*, Docket No. 22-0301 (issued July 25, 2022); *M.D.*, Docket No. 19-0510 (issued August 6, 2019).

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2021 and March 23, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 24, 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