United States Department of Labor
Employees' Compensation Appeals Board

K.J., Appellant	)	
and	)	**Docket No. 20-0572**
	)	**Issued: July 12, 2023**
U.S. POSTAL SERVICE, HUFFMAN POST OFFICE, Anchorage, AK, Employer	)	

Appearances:
Stephanie Leet, *Esq.*, for the appellant[1]
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
JANICE B. ASKIN, Judge

JURISDICTION

On January 17, 2020 appellant, through counsel, filed a timely appeal from a November 25, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

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[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.*

[3] The Board notes that, following the November 25, 2019 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.*

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 30, 2018, as she no longer had residuals or disability causally related to her accepted October 5, 2015 employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals on or after August 30, 2018 due to the accepted October 5, 2015 employment injury.

FACTUAL HISTORY

On October 7, 2015 appellant, then a 53-year-old station manager, filed a traumatic injury claim (Form CA-1) alleging that on October 5, 2015 she injured her back, head, knees, right hip, right great toe, and left ankle when she fell down steps while in the performance of duty. OWCP accepted the claim for nondisplaced right anterior tibial plateau fracture and great right toe fracture.[4] It paid appellant wage-loss compensation on the supplemental rolls beginning November 20, 2015 and on the periodic rolls beginning April 2, 2017.

In a report dated February 8, 2016, Dr. Robert J. Hall, a Board-certified orthopedic surgeon, noted persistent right leg pain status post October 5, 2015 injury of nondisplaced right tibial tuberosity fracture. He related appellant's physical examination findings and referred her for evaluation for complex regional pain syndrome (CRPS).

In a report dated March 3, 2016, Dr. Sean D. Taylor, Board-certified in physical medicine and rehabilitation, diagnosed work-related right tibial tubercle fracture, depression, and bone scan suggestion of right lower extremity CRPS. A review of appellant's February 23, 2016 bone scan showed probable atypical CRPS.

Dr. Taylor, in a report dated April 13, 2016, noted appellant's diagnoses. In an attached duty status report (Form CA-17) of even date, he related that she could return to work for four hours per day of sedentary office work only.

In an April 21, 2016 report, Dr. Hall diagnosed right lower extremity CRPS and nondisplaced fracture of the right tibial tuberosity, sequela. He reviewed a bone scan, which he related showed CRPS.

On April 26, 2016 appellant noted that she was awaiting approval of expansion of her claim to include additional conditions including CRPS due to the accepted October 5, 2015 employment injury.

On May 11, 2016 OWCP referred appellant, together with a statement of accepted facts (SOAF) and the medical record, to Dr. James R. Schwartz, a Board-certified orthopedic surgeon, for an opinion regarding whether she sustained additional medical conditions causally related to the accepted October 5, 2015 employment injury and whether she continued to have residuals and

[4] This claim was assigned OWCP File No. xxxxxx460. Appellant also filed occupational disease claims in OWCP File Nos. xxxxxx954, xxxxxx363, and xxxxxx879. OWCP administratively combined OWCP File Nos. xxxxxx954, xxxxxx363, and xxxxxx879 with the instant claim, OWCP File No. xxxxxx460 serving as the master file.

disability from the accepted nondisplaced right anterior tibial plateau fracture and right great toe fracture.

In a report dated May 12, 2016, Dr. Hall again related that appellant sustained nondisplaced tibial tubercle fracture when she fell at work and subsequently developed CRPS.

OWCP received encounter summaries dated May 3 and July 15, 2016 from Dr. Robert A. Lada, a Board-certified neurologist, who noted that appellant was seen for a traumatic October 5, 2015 brain and head injury when she fell off a few steps and sustained a concussion. Dr. Lada reported that she was seen for sleep problems, migraine, neck and head pain, and concussion with no loss of consciousness.

On June 21, 2016 OWCP received a May 31, 2016 report from Dr. Schwartz diagnosing right knee contusion with right proximal tibia bone bruising resolved, and CRPS without clinical evidence at the present time. Dr. Schwartz found no additional conditions causally related to the accepted employment injury. He opined that the accepted employment injuries had resolved without residuals. Appellant related that her physician diagnosed a concussion due to her accepted October 5, 2015 fall. Dr. Schwartz recommended referral to a neurologist for an opinion on appellant's head injury, as that was outside of his field of expertise. From an orthopedic standpoint, he concluded that appellant's right great toe fracture should have healed with no physiologic residuals or any ongoing right lower extremity physiologic process. Next, Dr. Schwarz concluded that the accepted right anterior tibial plateau fracture had resolved as he found no evidence of any intra-articular right knee structural abnormalities/injuries and no evidence of CRPS other than subjective pain complaints. In an attached work capacity evaluation (Form OWCP-5c), he found that appellant was capable of working a sedentary job for eight hours per day.

Dr. Hall, in a report dated August 12, 2016, detailed appellant's history of injury and diagnosed right hip trochanteric bursitis, which he attributed to her altered gait. He diagnosed consequential CRPS injury due to the October 2015 injury.

On December 6, 2016 appellant underwent right knee arthroscopic surgery with plica excision, which had not been authorized by OWCP.

On January 11, 2017 appellant filed a claim for a recurrence of disability (Form CA-2a), asserting that she had not been medically cleared to return to work due to consequential CRPS.

In a January 18, 2017 report, Dr. Kenneth C. Swayman, a Board-certified podiatrist, diagnosed chronic right ankle pain and instability due to the accepted October 5, 2015 employment injury when appellant fell at work. He noted that she had chronic right ankle swelling (capsulitis/synovitis) and medial talar dome injury/fracture. Dr. Swayman also opined that appellant developed left severe plantar fasciitis due to transferring her left side due to her injury and that this impacted her ability to ambulate.

In a report dated November 17, 2016, Dr. Alfred R. Lonser, a physician Board-certified in pain medicine and anesthesiology, diagnosed CRPS, chronic low back pain, right tibial plateau fracture, chronic pain, acute right hip pain, right leg pain, cervical facet syndrome, headache, intractable migraine headache, nausea, lumbar disc disease with radiculopathy, right ankle pain, neck pain, typical facial pain, sleep disorder, cervical and lumbar degenerative disc disease, lumbar

region spondylosis without myelopathy or radiculopathy, acute back pain, bilateral leg edema, and chronic right knee pain.

In reports dated September 20, 2016 to June 22, 2017, Dr. Leon H. Chandler, a physician specializing in anesthesiology, diagnosed CRPS, chronic pain, right knee pain, neck pain, difficulty sleeping, daytime somnolence, lumbar radiculopathy, sleep disorder, nausea, and migraine. He reported that appellant was seen for a follow-up visit for chronic lower extremity pain secondary to a work injury and CRPS. On examination of the right lower extremity, Dr. Chandler observed reduced knee range of motion (ROM), tenderness, pain on palpation of the knee, knee edema, and ankle tenderness. Other examination findings included left knee pain on palpation, cervical tenderness on palpation, lumbar tenderness on bilateral palpation, positive straight leg test, positive Gaenslen's, tenderness over the right piriformis, tenderness over right sacroiliac joint, and tenderness over right trochanteric bursa.

In a report dated July 6, 2017, Dr. Gary G. Bawtinhimer, a Board-certified psychiatrist, diagnosed post-traumatic stress disorder (PTSD), depression, and anxiety. He attributed appellant's depression and anxiety to a severe work-related injury. Dr. Bawtinhimer explained that the chronic pain and loss of function caused by the work injury resulted in sleep disturbance, mood depression, anxiety, diminished ability to participate in activities she had enjoyed, and overall distress about her quality of life. He observed that appellant's ability to be a productive worker at the employing establishment had directly and severely been impacted by her work injury and subsequent physical limitations and chronic pain.

On September 21, 2017 OWCP authorized right ankle arthroscopic surgery, which was performed on October 13, 2017.

On November 6, 2017 OWCP referred appellant to Dr. Josef K. Eichinger, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between her treating physicians and OWCP's second opinion physician, as to whether she had residuals of the accepted October 5, 2015 employment injury, associated continuing disability, and whether the claim should be expanded to include any additional medical conditions, specifically whether CRPS should be accepted as causally related or consequential to the accepted employment injury.

In a November 29, 2017 report, Dr. Eichinger noted his review of the medical record and SOAF. On physical examination, he found inconsistent right lower extremity and no current evidence of CRPS. Dr. Eichinger found zero lower extremity skin color changes, no edema, no sweating asymmetry or changes, no trophic changes, completely normal skin and nails, no vasomotor changes, and intact dermatomal distribution sensation. Appellant reported decreased right knee ROM, with inconsistent test findings. A review of a magnetic resonance imaging (MRI) scan showed the right tibial plateau fracture had healed. Additionally, appellant's great right toe fracture has healed and is no longer symptomatic. Dr. Eichinger observed that both the knee and ankle arthroscopies revealed no intra-articular pathology other than knee synovitis and plica, which was congenital and not traumatic. Based on these findings, he determined that the accepted conditions had resolved. Dr. Eichinger further opined that appellant did not have CRPS, nor did the accepted October 5, 2015 employment injury cause or aggravate any condition other than the accepted great toe fracture and nondisplaced right anterior tibial plateau fracture. In support of this conclusion, he noted her significant hypersensitivity, which was inconsistent with an intact sensory examination; no vasomotor of sudomotor edema findings; and no trophic or motor

findings. Additionally, Dr. Eichinger observed that the Budapest criteria, which is used in diagnosing CRPS, was not present.

On January 2, 2018 appellant requested that OWCP expand the acceptance of her claim to include concussion, right Achilles, right knee severe anterior cruciate ligament sprain, fractured right ankle, soft right ankle, right knee large Baker's cyst, and C4-5 bulging discs as due to the accepted October 5, 2014 employment injury, consequential injuries of left foot plantar fasciitis, left heel bone spur, CRPS, right hip large trochanter bursitis, PTSD, insomnia, anxiety, and depression, and aggravations of preexisting migraines and bilateral temporomandibular joint (TMJ) dysfunction.

In a report dated March 19, 2018 and amended on April 9, 2018, Dr. Kenneth J. Boomgaard, a Board-certified family medicine physician, noted appellant's medical history and related that she was seen in a follow-up visit for her complaints of CRPS, chronic pain and migraine without aura. He reviewed diagnostic tests and provided examination findings.

In an April 5, 2018 report, Dr. Swayman diagnosed right Achilles tendinitis, CRPS, and left plantar fasciitis. He attributed appellan's left severe plantar fasciitis to her compensating by transferring her weight to her left side.

Dr. Chandler, in a report dated April 9, 2018, diagnosed CRPS, and noted chronic pain, right knee pain, neck pain, difficulty sleeping, daytime somnolence, lumbar radiculopathy, sleep disorder, nausea, and migraine.

In a letter dated April 13, 2018, OWCP advised appellant that it proposed to terminate her wage-loss compensation based on the opinion of Dr. Eichinger, the impartial medical examiner (IME), who concluded that her accepted conditions had resolved without disability or residuals. Additionally, Dr. Eichinger found no evidence to warrant expansion of her claim to include CRPS.

OWCP subsequently received additional evidence.

In a March 8, 2017 return to work note, Dr. Chandler diagnosed a consequential injury of CRPS due to the accepted October 5, 2005 employment injury. In an April 4, 2017 report, he explained that CRPS could be created by trauma such as bumping an arm into a wall. Dr. Chandler, in a January 17, 2018 report, related that he had started treating appellant for consequential CRPS in May 2016 and explained that the diagnosis of CRPS had been based on diagnostic tests including three bone scans, review of medical evidence, and appellant's history of injury and medical history. He opined that her medical and preexisting injuries had been aggravated by her CRPS, that her abnormal gait and chronic pain aggravated her low back condition, and that her migraines and bilateral TMJ were aggravated by the stress of dealing with chronic pain. Dr. Chandler concluded that appellant's CRPS had been caused by the October 5, 2015 employment injury and cited to Budapest criteria supporting his diagnosis of CRPS.

Dr. Bawtinhimer, in progress notes dated February 19, 2018, noted that appellant had anxiety, loss of interest, withdrawal, and sleep disturbance following a severe injury when she fell at work in October 2015.

Dr. Chandler on March 29, 2018 responded to questions posed regarding the diagnosis of CRPS. He explained that his diagnosis of right lower extremity CRPS was based on examination

findings including decreased ROM, joint stiffness, swelling, skin color change, continuous throbbing pain or burning, severe weakness, and muscle spasms and review of three bone scans. Dr. Chandler concluded that appellant was totally disabled from work.

Dr. Chandler, in a May 8, 2018 note, reported that appellant sustained a nondisplaced right tibial plateau and great toe fracture due to an October 2015 fall at work and that she underwent surgery following the injury. He opined that the surgery and injury trauma aggravated her CRPS symptoms. Dr. Chandler attached an article regarding the prevention of CRPS following surgery.

By decision dated August 30, 2018, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits. It relied on the opinion of Dr. Eichinger, the referee physician, who concluded that appellant no longer had residuals or disability due to the accepted conditions and found evidence insufficient to support expansion of her claim.

In a September 6, 2018 duty status report (Form CA-17), Dr. Swayman diagnosed ongoing right ankle capsulitis/synovitis and medial tarsal dome lesion. He opined that appellant was unable to return to work.

Dr. Swayman, in a September 24, 2018 report, explained that appellant also sustained a severe right ankle injury and right lower extremity severe nerve and soft tissue injury due to the twisting and contusion she sustained when she fell on October 5, 2015. He explained that she has had balance issues due to compensation for the way she walked, developed left plantar fasciitis, and as a result, required a walking assistance device. Dr. Swayman opined that appellant was totally disabled from her date-of-injury job as she could not stand or walk any significant distance, nor ascend or descend steps, which he attributed to the accepted work injury.

On September 28, 2018 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In an October 11, 2018 report, Dr. Mark Shearer, a podiatrist, noted that appellant had been seen for progressive right ankle arthritis, bilateral plantar heel pain, and a history of talar fracture and synovitis. He diagnosed chronic ankle capsulitis, synovitis, and medial talar dome lesion.

By decision dated January 16, 2019, OWCP's hearing representative affirmed the August 30, 2018 decision.

On August 27, 2019 appellant, through counsel, requested reconsideration.

On September 3, 2019 OWCP received an undated report from Dr. Steven P. Johnson, a physician Board-certified in pain medicine and anesthesiology, who noted that he had taken over appellant's care since Dr. Chandler had retired. He noted that he had reviewed her medical records. Dr. Johnson explained that peripheral neuropathy was commonly caused by injury and the fall appellant sustained at work resulted in swelling, deep contusion, and bone fractures which supported a diagnosis of right lower extremity peripheral neuropathy. He explained that her symptoms of tingling, intermittent sharp shooting pains, cramping, and numbness together with right lower extremity weakness and cramping and temperature change were suggestive of CRPS secondary to peripheral neuropathy.

By decision dated November 25, 2019, OWCP denied modification of the January 16, 2019 decision.

LEGAL PRECEDENT -- ISSUE 1

According to FECA,[5] 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] OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to 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 compensation.[9] 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.[10]

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to establish that appellant no longer had residuals or disability causally related to the accepted conditions of nondisplaced right anterior tibial plateau fracture and great right toe fracture.

OWCP referred appellant to Dr. Eichinger for an impartial medical examination to determine whether she had continuing residuals and disability causally related to the accepted conditions. In his report, Dr. Eichinger noted that she reported decreased right knee ROM; however, she had inconsistent test findings. He also related that review of an MRI scan showed the right tibial plateau fracture had healed, and that appellant's great right toe fracture has healed and was no longer symptomatic. Dr. Eichinger observed that both the knee and ankle arthroscopies revealed no intra-articular pathology other than knee plica, which was congenital and not traumatic, and synovitis. Based on these findings, he determined that the accepted October 5, 2015 employment injuries had resolved. As previously noted, Dr. Eichinger examined appellant, reviewed her medical records, and reported an accurate history. He indicated that her physical findings and diagnostic studies established that the accepted conditions of nondisplaced right anterior tibial plateau fracture and great right toe fracture had resolved. Dr. Eichinger's opinion

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[5] *Supra* note 2.

[6] *S.H.,* Docket No. 19-1855 (issued March 10, 2021); *S.F.,* 59 ECAB 642 (2008).

[7] *A.G.,* Docket No. 18-0749 (issued November 7, 2018); *see I.J.,* 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

[8] *R.R.,* Docket No. 19-0173 (issued May 2, 2019); *Del K. Rykert*, 40 ECAB 284 (1988).

[9] *L.W.,* Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

[10] *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.,* Docket No. 08-1822 (issued August 5, 2009).

regarding these conditions is, therefore, entitled to the special weight of the medical evidence.[11] Thus, the Board finds that OWCP met its burden of proof.

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.[12] 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.[13] A claimant must establish by the weight of the reliable, probative, and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.[14]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing disability or residuals on or after August 30, 2018, causally related to her accepted employment injury.

Following the termination of her wage-loss compensation and medical benefits, effective August 30, 2018, appellant submitted a September 6, 2018 duty status report (Form CA-17), wherein Dr. Swayman diagnosed ongoing right ankle capsulitis/synovitis and medial tarsal dome lesion. He related that appellant was unable to return to work. Dr. Swayman, in a September 24, 2018 report, explained that appellant also sustained a severe right ankle injury and right lower extremity severe nerve and soft tissue injury due to the twisting and contusion she sustained when she fell on October 5, 2015. He explained that she has had balance issues due to compensation for the way she walked, developed left plantar fasciitis, and as a result required a walking assistance device. Dr. Swayman opined that appellant was totally disabled from her date-of-injury job as she could not stand or walk any significant distance, nor ascend or descend steps, which he attributed to the accepted work injury. However, he did not provide an opinion as to whether appellant had any employment-related disability or residuals on or after August 30, 2018 due to the accepted employment injury. Therefore, this evidence is of no probative value.[15]

Appellant also submitted an October 11, 2018 report, wherein Dr. Shearer noted that appellant had been seen for progressive right ankle arthritis, bilateral plantar heel pain, and a

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[11] *Supra* note 9.

[12] *See V.W.,* Docket No. 19-0645 (issued February 22, 2021); *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); *George Servetas,* 43 ECAB 424, 430 (1992).

[13] *See O.W.,* Docket No. 20-1343 (issued August 16, 2022); *L.S.,* Docket No., 20-0570 (issued December 15, 2020); *James Mack,* 43 ECAB 321 (1991).

[14] *J.N.,* Docket No. 20-1030 (issued November 20, 2020); *S.F.,* Docket No. 17-1427 (issued May 16, 2018).

[15] *See A.M.,* Docket No. 22-0300 (April 10, 2023); *L.B*., Docket No. 18-0533 (issued August 27, 2018); *D.K*., Docket No. 17-1549 (issued July 6, 2018).

history of talar fracture and synovitis. He diagnosed chronic ankle capsulitis, synovitis, and medial talar dome lesion. OWCP also received an undated report from Dr. Johnson, who explained that peripheral neuropathy was commonly caused by injury, and that the fall appellant sustained at work resulted in swelling, deep contusion, and bone fractures, which supported a diagnosis of right lower extremity peripheral neuropathy. Dr. Johnson explained that her symptoms of tingling, intermittent sharp shooting pains, cramping, and numbness, together with right lower extremity weakness and cramping and temperature change were suggestive of CRPS secondary to peripheral neuropathy. However, neither of these physicians provided an opinion as to whether appellant had any employment-related disability or residuals on or after August 30, 2018 due to the accepted employment injury. Therefore, this evidence is of no probative value.[16]

As the medical evidence of record is insufficient to establish continuing employment-related disability or residuals on or after August 30, 2018 causally related to the accepted employment injury, the Board finds that appellant has not met her burden of proof.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 30, 2018, as she no longer had residuals or disability causally related to her accepted October 5, 2015 employment injury. The Board further

[16] *Id*.

finds that appellant has not met her burden of proof to establish continuing disability or residuals on or after August 30, 2018 due to the accepted October 5, 2015 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 25, 2019 decision the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board