

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

A.V., Appellant)	
)	
and)	Docket No. 23-0230
)	Issued: July 28, 2023
U.S. POSTAL SERVICE, PALATINE)	
PROCESSING AND DISTRIBUTION CENTER,)	
Palatine, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On December 5, 2022 appellant filed a timely appeal from a November 18, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 11, 2022, as she no longer had disability or residuals causally related to her accepted September 12, 2007 employment injury; and (2) whether

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the November 18, 2022 decision, a appellant submitted additional evidence to OWCP. 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.*

appellant has met her burden of proof to establish continuing disability or residuals on or after July 11, 2022, causally related to her accepted September 12, 2007 employment injury.

FACTUAL HISTORY

On October 1, 2007 appellant, then a 38-year-old mail processor, filed a traumatic injury claim (Form CA-1) alleging that on September 12, 2007 she experienced lower back pain radiating to both legs when she lifted a tub while sorting mail in the performance of duty. She stopped work on September 12, 2007. OWCP accepted the claim for lumbar sprain and subsequently expanded the acceptance of appellant's claim to include displacement of lumbar intervertebral disc without myelopathy. It paid her wage-loss compensation on the supplemental and periodic rolls for intermittent periods of disability. On July 20, 2019 appellant stopped work completely. OWCP paid her wage-loss compensation on the periodic rolls, effective October 13, 2019.

By decision dated October 8, 2019, OWCP further expanded the acceptance of appellant's claim to include brachial neuritis or radiculitis.

On March 16, 2022 OWCP referred appellant, along with the medical record, a series of questions, and a statement of accepted facts (SOAF), to Dr. Hythem P. Shadid, a Board-certified orthopedic surgeon, for a second-opinion evaluation regarding the status of her accepted conditions and current work restrictions. In a May 4, 2022 report, Dr. Shadid noted his review of the medical record, including the SOAF, and appellant's accepted conditions of lumbar sprain, displacement of lumbar intervertebral disc without myelopathy, and brachial neuritis or radiculitis. On examination of appellant's lumbar spine, he observed no crepitus or tenderness on palpation. Range of motion testing was full. Straight leg raise testing was negative. In response to OWCP's questions, Dr. Shadid opined that appellant's accepted conditions had resolved. He reported that there was no objective evidence of a lumbar strain, disc displacement, or brachial neuritis on examination and no findings to support an ongoing disabling condition. Dr. Shadid further explained that appellant's accepted conditions, by natural history and definition, were temporary and expected to resolve within 90 days of onset. He concluded that she had no disabling conditions causally related to the accepted September 12, 2007 employment injury, and that she was capable of returning to her date-of-injury job. In a May 4, 2022 work capacity evaluation (Form OWCP-5c), Dr. Shadid indicated that appellant was capable of performing her usual job without restrictions. He also noted medium work restrictions due to her nonwork-related conditions.

On June 8, 2022 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because she no longer had disability or residuals causally related to her accepted September 12, 2007 employment injury. It found that the weight of the medical evidence rested with Dr. Shadid, who found that she no longer had any disability or residuals causally related to her accepted employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination of benefits.

By decision dated July 11, 2022, OWCP finalized the notice of proposed termination of appellant's wage-loss compensation and medical benefits, effective July 11, 2022. It found that the weight of the medical evidence rested with Dr. Shadid, the second-opinion examiner, who had determined in a May 4, 2022 report that she did not have disability or residuals due to the accepted September 12, 2007 employment injury.

Appellant subsequently submitted a letter dated July 13, 2022 by Dr. Bruce J. Montella, a Board-certified orthopedic surgeon, who noted the September 12, 2007 employment incident and indicated that appellant had a permanent functional impairment due to the injury. Dr. Montella reported that he disagreed with Dr. Shadid's second-opinion evaluation because there was objective evidence of nerve or spinal cord impingement with some asymmetry of reflexes on physical examination. He also alleged that diagnostic studies were consistent with disc pathology and radiculopathy. Dr. Montell further indicated that his examination was consistent with appellant's ongoing complaints and difficulties.

On July 19, 2022 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated November 18, 2022, OWCP's hearing representative affirmed the July 11, 2022 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 benefits.³ It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 11, 2022, as she no longer had disability or residuals causally related to her accepted September 12, 2007 employment injury.

In a May 4, 2022 report, Dr. Shadid, OWCP's second-opinion examiner, noted his review of the SOAF and appellant's accepted conditions of lumbar sprain, displacement of lumbar intervertebral disc without myelopathy, and brachial neuritis or radiculitis. He provided examination findings and opined that her accepted conditions had resolved. Dr. Shadid explained

³ *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see also I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁵ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁶ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

that there was no objective evidence of a lumbar strain, disc displacement, or brachial neuritis on examination and no findings to support an ongoing disabling condition. He concluded that appellant had no disabling conditions causally related to the accepted September 12, 2007 employment injury and completed a Form OWCP-5c indicating that she was capable of returning to her date-of-injury job.

The Board has reviewed the opinion of Dr. Shadid and finds that it has reliability, probative value, and convincing quality with respect to the relevant issue of continuing work-related disability and residuals. Dr. Shadid provided a thorough factual and medical history and summarized the relevant medical evidence. He provided medical rationale for his opinion by explaining that appellant did not have objective evidence of her accepted conditions related to her September 12, 2007 employment injury.⁸ The Board finds, therefore, that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Shadid, OWCP's referral physician.

The Board thus finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 11, 2022.

LEGAL PRECEDENT -- ISSUE 2

When OWCP properly terminates wage-loss compensation and medical benefits, the burden shifts to appellant to establish continuing disability or residuals, on or after that date, causally related to the accepted employment injury.⁹ To establish a causal relationship between continuing residuals and/or disability and the accepted employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.¹⁰

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 11, 2022, causally related to her accepted September 12, 2007 employment injury.

Following the termination of her wage-loss compensation and medical benefits, appellant submitted a July 13, 2022 report from Dr. Montella who noted the September 12, 2007 employment incident and expressed disagreement with Dr. Shadid's second-opinion evaluation. Dr. Montella asserted that appellant had objective evidence of nerve or spinal cord impingement with some asymmetry of reflexes on physical examination and also alleged that diagnostic studies were consistent with disc pathology and radiculopathy. However, he failed to provide sufficient medical rationale to establish that appellant had continuing residuals of her accepted lumbar sprain, displacement of lumbar intervertebral disc without myelopathy, and brachial neuritis or radiculitis conditions. The Board has held that a report is of limited probative value regarding causal

⁸ *G.S.*, Docket No. 22-0697 (issued November 28, 2022).

⁹ *K.M.*, Docket No. 21-1351 (issued October 8, 2021); *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *Manuel Gill*, 52 ECAB 282 (2001).

¹⁰ *C.L.*, Docket No. 18-1379 (issued February 3, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

relationship if it does not contain sufficient medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹¹ Accordingly, this report is of limited probative value.

As the medical evidence of record is insufficient to establish continuing work-related disability or residuals causally related to her accepted September 12, 2007 employment injury, the Board finds that appellant has not met her burden of proof.¹²

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 11, 2022, as she no longer had residuals or disability causally related to her accepted September 12, 2007 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 11, 2022, causally related to her accepted September 12, 2007 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 28, 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

¹¹ *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *Melvina Jackson*, 38 ECAB 443 (1987).

¹² *See R.G.*, Docket No. 22-0165 (issued August 11, 2022).