

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

I.B., Appellant)	
)	
and)	Docket No. 23-0559
)	Issued: July 7, 2023
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS AND BORDER PROTECTION,)	
Eagle Pass, TX, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 6, 2023 appellant filed a timely appeal from a January 20, 2023 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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 20, 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. 20 C.F.R. § 501.2(c)(1). Evidence not before OWCP will not be considered by the Board for the first time on appeal." *Id.*

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective January 20, 2023 as she had no further disability or residuals causally related to her accepted employment injury.

FACTUAL HISTORY

On February 5, 2021 appellant, then a 49-year-old general inspection, investigation, and compliance officer, filed a traumatic injury claim (Form CA-1) alleging that on January 29, 2021 she contracted COVID-19 while in the performance of duty. She stopped work on February 2, 2021. OWCP accepted the claim for COVID-19. It paid appellant wage-loss compensation on the supplemental rolls effective April 1, 2021.

On February 25, 2021 a hospital case manager advised that appellant had been admitted to the hospital on February 16, 2021 for acute hypoxic respiratory failure due to COVID-19. Appellant was discharged on oxygen and with home health care on February 25, 2021.

In a September 27, 2021 report, Dr. Randall C. Bell, a Board-certified internist and pulmonologist, discussed appellant's complaints of slowly improving shortness of breath. He diagnosed post-COVID pneumonia respiratory failure. Dr. Bell found that appellant could return to part-time modified work on October 4, 2021 and to full-time work without restrictions on October 18, 2021.

On October 4, 2021 appellant accepted a temporary light-duty job offer as a seized property specialist lifting no more than 50 pounds. She returned to modified employment on that date.

OWCP paid appellant wage loss for intermittent time lost from work due to temporary total disability and time lost for medical treatment from October 18, 2021 onward.

On August 4, 2022 Dr. Bell indicated that appellant was "toughing thr[ough]" work, but continued to experience nighttime shortness of breath and a cough. He diagnosed COVID-19, an unspecified post COVID-19 condition, obstructive sleep apnea, and uncomplicated mild intermittent asthma. Dr. Bell related that appellant continued to have "ongoing distress after COVID" and noted that her "illness was devastating," but slowly improving. He indicated that she continued to use full bronchodilator therapy, and could work even though still ill. Dr. Bell opined that appellant was partially rather than fully disabled and required "very aggressive treatment for her condition." In a work capacity evaluation (Form OWCP-5c) of even date, he found that she could perform her usual job without restrictions.

On August 17, 2022 OWCP referred appellant to Dr. Carlos F. Morales, a Board-certified internist and pulmonologist, for a second opinion examination.

In a report dated September 29, 2022, Dr. Morales reviewed the statement of accepted facts and the results of a November 18, 2022 pulmonary function study and x-ray of the chest. He diagnosed COVID-19 which had resolved as of September 29, 2022. Dr. Morales related that appellant had subjective complaints of fatigue and dyspnea with exertion, but that the objective tests were normal. He attributed her mild loss of total lung function to her body mass, and advised

that she had no evidence of restrictive lung disease. Dr Morales concluded that appellant had no “observable current diagnosis causally connected to COVID-19.” He further related:

“Some people who have been infected with the virus that causes COVID-19 can experience long-term effects from their infection, known as post-COVID conditions (PCC) or long COVID. Post-COVID conditions are found more often in people who had severe COVID-19 illness, but anyone who has been infected with the virus that causes COVID-19 can experience post-COVID conditions, even people who had mild illness or no symptoms from COVID-19. There is no test to diagnose post-COVID conditions, and people may have a wide variety of symptoms that could come from other health problems. This can make it difficult for healthcare providers to recognize post-COVID conditions.”

Dr. Morales found that appellant required no further medical treatment and could resume full-duty capacity.

In an undated work note, Dr. Morales indicated that he had examined appellant on September 29, 2022 and that her return to work date was “pending.”

In a duty status report (Form CA-17) dated October 20, 2022, Dr. Bell diagnosed dyspnea and found that appellant could perform the usual work duties listed on the form.

On December 10, 2022 OWCP notified appellant of its proposed termination of her wage-loss compensation and medical benefits as the weight of the evidence established that she no longer had any employment-related residuals or disability due to her accepted January 29, 2021 employment injury. It afforded her 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

By decision dated January 20, 2023, OWCP terminated appellant’s wage-loss compensation and medical benefits effective that date. It found that the September 2022 report from Dr. Morales constituted the weight of the evidence and established that she had no disability or need for medical treatment causally related to her accepted employment injury.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee’s benefits.³ 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

³ See *T.C.*, Docket No. 20-1163 (issued July 13, 2021); *R.H.*, Docket No. 19-1064 (issued October 9, 2020); *Paul L. Stewart*, 54 ECAB 824 (2003).

the employment.⁴ Its 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.⁶ 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.⁷

ANALYSIS

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits effective January 20, 2023.

OWCP based its termination of appellant's wage-loss compensation and medical benefits for the condition of COVID-19 on the September 2022 report of Dr. Morales, its referral physician.

In a report dated September 29, 2022, Dr. Morales discussed appellant's complaints of fatigue and dyspnea with exertion. He advised that her chest x-ray and physical examination were normal. Dr. Morales attributed reduced total lung capacity on testing to appellant's body mass. He found that appellant had no "observable current diagnosis" due to COVID-19 and that the condition had resolved. Dr. Morales opined that she required no further medical treatment and could return to work without limitations. He further noted, however, that some people suffered long-term difficulties following COVID-19 infections, particularly those who had experienced severe illness from COVID-19. Dr. Morales advised that there was no test to diagnose long COVID or post-COVID conditions, and that it was thus difficult for healthcare providers to identify.

The Board finds that Dr. Morales failed to provide adequate medical rationale for his opinion that appellant had no further residuals or disability due to her accepted employment-related condition of COVID-19.⁸ While he indicated that she had no objective findings supporting a diagnosed condition related to COVID-19, he further advised that certain individuals developed long COVID or post-COVID conditions that were challenging to diagnose. As Dr. Morales did not address whether appellant had continued residuals of her accepted condition due to long COVID or a post-COVID condition, his opinion is of diminished probative value, and insufficient to meet OWCP's burden of proof.

⁴ *P.T.*, Docket No. 21-0328 (issued May 2, 2022); *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁵ *T.C.*, *supra* note 3; *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

⁶ *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Furman G. Peake*, 41 ECAB 361 (1990).

⁷ *A.J.*, Docket No. 18-1230 (issued June 8, 2020); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

⁸ *See P.T.*, *supra* note 4; *J.T.*, Docket No. 20-1167 (issued January 26, 2021).

The Board further notes that Dr. Morales indicated in his report of September 29, 2022 that appellant was capable of returning to work in a full-duty capacity; however, in his return to work slip of even date, he noted that his return to work was “pending” without further explanation.

For these reasons, OWCP improperly terminated appellant’s wage-loss compensation and medical benefits, effective January 20, 2023.

CONCLUSION

The Board finds that OWCP improperly terminated appellant’s wage-loss compensation and medical benefits effective January 20, 2023.

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2023 decision of the Office of Workers’ Compensation Programs is reversed.

Issued: July 7, 2023
Washington, DC

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

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

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