

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

Y.S., Appellant	)	
	)	
and	)	Docket No. 23-0030
	)	Issued: June 20, 2023
U.S. POSTAL SERVICE, INTERNATIONAL	)	
EXCHANGE OFFICE, Jersey City, NJ,	)	
Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
*Michael D. Overman, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On October 12, 2022 appellant, through counsel, filed a timely appeal from an April 25, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUES**

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective November 16, 2021, as she no longer had disability or residuals causally related to her accepted October 11, 2012 employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals on or after November 16, 2021 causally related to her accepted October 11, 2012 employment injury.

## **FACTUAL HISTORY**

On October 18, 2012 appellant, then a 33-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on October 11, 2012 she sustained a low back injury when a mail cage she was pushing out of a truck hit plates attached to the dock, causing the cage to pop backwards, while in the performance of duty. She stopped work on that date. OWCP accepted appellant's claim for displacement of lumbar intervertebral disc at S1 with radiculopathy. It paid her wage-loss compensation on the supplemental rolls, effective November 26, 2012 and on the periodic rolls, effective October 20, 2013.

Appellant received medical treatment for her accepted lumbar condition from attending physicians, including Dr. Monica Mehta and Dr. Mark Filippone, Board-certified physiatrists. The physicians opined that appellant was totally disabled due to her accepted condition. Between 2013 and 2015, OWCP engaged in extensive development of the medical evidence, which resulted in three OWCP referral physicians finding that appellant continued to have disability causally related the October 11, 2012 employment injury.

On November 6, 2015 Dr. Louis Quartararo, a Board-certified orthopedic surgeon, performed OWCP-authorized back surgery, including lumbar laminotomy with partial foraminotomy and partial facetectomy; bilateral decompression of the nerve root at L5-S1; bilateral lumbar discectomy at L5-S1; and destruction via thermal ablation of the medial branch nerve at bilateral L5-S1.

In a March 15, 2019 report, Dr. Filippone indicated that a February 27, 2019 magnetic resonance imaging (MRI) scan of appellant's lumbar spine revealed an L5-S1 focal left paracentral disc material compatible with a new left paracentral disc herniation abutting the descending left S1 nerve root. He opined that this was a new finding compared to the prior MRI scan of appellant's lumbar spine and advised that appellant remained totally disabled.

On September 1, 2021 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions, for a second opinion examination/evaluation with Dr. Frank J. Corrigan, a Board-certified orthopedic surgeon. It requested that Dr. Corrigan provide an opinion regarding whether appellant had continuing disability or residuals causally related to her accepted October 11, 2012 employment injury.

In a September 23, 2021 report, Dr. Corrigan discussed appellant's October 11, 2012 employment incident and detailed the treatment appellant received for her accepted low back condition, including her November 6, 2015 surgery. He noted that physical examination of the lumbar spine/lower extremities revealed no tenderness to palpation, no pain on range of back

motion, and intact sensation to light and coarse touch in the bilateral lower extremities. Reflexes were intact and symmetric with bilateral patellar and Achilles tendon reflexes, bilateral straight leg raising was negative bilaterally, and 5/5 strength in the bilateral lower extremities. Dr. Corrigan provided a discussion of appellant's diagnostic testing since October 2012, including the February 27, 2019 MRI scan that showed a new left-sided paracentral disc herniation abutting the left S1 nerve root, which was not seen on prior diagnostic testing and represented the natural progression of chronic and degenerative change, rather than the results of the October 11, 2012 employment injury. He noted that appellant's accepted injury was a right-sided disc herniation at S1 with a right-sided radiculopathy associated with impingement of the right S1 nerve root. Dr. Corrigan found that appellant had no objective findings of the accepted October 11, 2012 employment injury and opined that appellant's present findings/symptoms were related to new left-sided degenerative condition at S1, which was not related to the October 11, 2012 employment injury. He opined that no further treatment was medically necessary or appropriate for the October 11, 2012 employment injury, noting that there was no medical necessity for ongoing treatment of that injury in the form of surgery, injections, medications, physical therapy, or durable medical equipment. Dr. Corrigan advised that any disability appellant had would be related to the new left-sided disc herniation at S1, which was not work related.

On October 14, 2021 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits because she ceased to have disability or residuals due to her accepted October 11, 2012 employment injury. It informed her that the proposed termination was based on the opinion of Dr. Corrigan, the OWCP referral physician. OWCP afforded appellant 30 days to submit additional evidence or argument challenging the proposed action.

In an October 27, 2021 letter, counsel argued that it was improper for OWCP to rely on Dr. Corrigan's opinion to terminate appellant's compensation because there was an outstanding conflict in the medical opinion evidence regarding work-related disability or residuals.

By decision dated November 16, 2021, OWCP finalized the notice of proposed termination of appellant's wage-loss compensation and medical benefits effective the same date. It found that the weight of the medical opinion evidence with respect to work-related disability and residuals rested with the opinion of Dr. Corrigan.

On November 23, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. Appellant submitted an October 25, 2021 report from Dr. Thomas Ragukonis, a Board-certified anesthesiologist, who reported that appellant complained of low back pain and numbness/tingling into her right leg. Dr. Ragukonis reported physical examination findings, diagnosed cervicalgia and low back pain, and recommended continuation of home exercises.

During the March 9, 2022 hearing, counsel argued that there was a conflict in the medical opinion evidence between the reports of Dr. Corrigan and Dr. Ragukonis regarding appellant's work-related disability and residuals.

By decision dated April 25, 2022, OWCP's hearing representative affirmed the November 16, 2021 decision. The hearing representative found that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective

November 16, 2021, and that appellant did not meet her burden of proof to establish continuing disability or residuals on or after November 16, 2021 causally related to her accepted October 11, 2012 employment injury.

### **LEGAL PRECEDENT -- ISSUE 1**

Once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>3</sup> It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>4</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

### **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 November 16, 2021, as she no longer had disability or residuals causally related to her accepted October 11, 2012 employment injury.

In a September 23, 2021 report, Dr. Corrigan, the OWCP referral physician, discussed appellant's factual and medical history, noting that a February 27, 2019 MRI scan showed a new left-sided paracentral disc herniation abutting the left S1 nerve root that was not seen on prior diagnostic testing and represented the natural progression of chronic and degenerative change, rather than the results of the October 11, 2012 employment injury. He indicated that appellant's accepted injury was a right-sided disc herniation at S1 with a right-sided radiculopathy associated with impingement of the right S1 nerve root. Dr. Corrigan found that appellant had no objective findings of the accepted October 11, 2012 employment injury and opined that appellant's present findings/symptoms were related to the new left-sided degenerative condition at S1, which was not related to the October 11, 2012 employment injury. He determined that no further treatment was medically necessary or appropriate for the October 11, 2012 employment injury, and advised that any disability appellant had would be related to the new left-sided disc herniation at S1, which was not work related.

The Board finds that the weight of the medical evidence with respect to OWCP's termination action is represented by the thorough, well-rationalized opinion of Dr. Corrigan. The September 23, 2021 report of Dr. Corrigan establishes that appellant had no disability or residuals causally related to her accepted October 11, 2012 employment injury after November 16, 2021. The Board has reviewed the opinion of Dr. Corrigan and finds that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of work-related disability and residuals. Dr. Corrigan provided a thorough factual and medical history and

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<sup>3</sup> *L.L.*, Docket No. 18-1426 (issued April 5, 2019); *C.C.*, Docket No. 17-1158 (issued November 20, 2018); *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>4</sup> *A.D.*, Docket No. 18-0497 (issued July 25, 2018). In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury. *See* 20 C.F.R. § 10.5(f).

<sup>5</sup> *See R.P.*, Docket No. 17-1133 (issued January 18, 2018).

accurately summarized the relevant medical evidence. He provided medical rationale for his opinion by explaining that there were no objective findings of the October 11, 2012 employment injury and that appellant's current findings/symptoms were related to a new left-sided degenerative condition at S1, which was not related to the October 11, 2012 employment injury.<sup>6</sup>

The Board thus finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective November 16, 2021.

### **LEGAL PRECEDENT -- ISSUE 2**

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing residuals or disability after that date, causally related to the accepted employment injury.<sup>7</sup> 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.<sup>8</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not met her burden of proof to establish continuing disability or residuals on or after November 16, 2021 causally related to her accepted October 11, 2012 employment injury.

After the November 16, 2021 termination action, appellant submitted an October 25, 2021 report from Dr. Ragukonis who reported physical examination findings, diagnosed cervicalgia and low back pain, and recommended continuation of home exercises. However, this report is of no probative value regarding disability or residuals after November 16, 2021 causally related to the accepted October 11, 2012 employment injury because Dr. Ragukonis did not provide an opinion that appellant had disability or residuals due to that employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>9</sup> Therefore, Dr. Ragukonis' October 25, 2021 report is insufficient to establish appellant's claim for work-related disability and residuals after November 16, 2021.

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<sup>6</sup> See *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) (regarding the importance, when assessing medical evidence, of such factors as a physician's knowledge of the facts and medical history, and the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion).

<sup>7</sup> See *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).

<sup>8</sup> *Id.*

<sup>9</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

As the medical evidence of record is insufficient to establish disability or residuals after November 16, 2021 causally related to the accepted October 11, 2012 employment injury, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for re consideration 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 OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective November 16, 2021, as she no longer had disability or residuals causally related to her accepted October 11, 2012 employment injury. The Board further finds that appellant has not met her burden of proof to establish continuing disability or residuals on or after November 16, 2021 causally related to her accepted October 11, 2012 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 25, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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