

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

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S.A., Appellant

and

U.S. POSTAL SERVICE, INTERNATIONAL  
SERVICE CENTER, JOHN F. KENNEDY  
INTERNATIONAL AIRPORT, Jamaica, NY,  
Employer  
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**Docket No. 20-1168  
Issued: March 29, 2023**

*Appearances:*  
James D. Muirhead, Esq., for the appellant<sup>1</sup>  
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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 18, 2020 appellant, through counsel, filed a timely appeal from a January 2, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

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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 an 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.

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.<sup>3</sup>

### **ISSUE**

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 13, 2019, as he no longer had disability or residuals causally related to his accepted January 17, 2012 employment injury.

### **FACTUAL HISTORY**

On January 24, 2012 appellant, then a 62-year-old express mail clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 17, 2012 he sustained injuries to his lower back and right hip, knee, and leg while in the performance of duty. He explained that he caught his right foot in a crossbar and tripped and fell to the floor onto his hands and knees. Appellant stopped work on the date of injury. OWCP accepted the claim for lumbosacral sprain, contusion of right hip, and contusion of right knee. It paid appellant wage-loss compensation on the supplemental rolls effective March 3, 2012, and on the periodic rolls effective June 29, 2014.

A magnetic resonance imaging (MRI) scan of the right knee dated July 7, 2015 indicated a history of right knee pain following a motor vehicle accident and revealed cartilage tears, a radial tear along the anterior tip of the posterior horn of the medial meniscus, and a partial thickness tear of the proximal fibers of the ACL.

In an October 15, 2016 narrative report, Dr. Shahid W. Mian, a Board-certified orthopedic surgeon, recounted his physical examination findings since October 15, 2014. He diagnosed a herniated disc at L4-5, right hip sprain, and chondromalacia and tears of the medial meniscus and ACL of the right knee, which he opined were due to the January 17, 2012 employment injury. In a work capacity evaluation (Form OWCP-5c) of even date, Dr. Mian advised that appellant was unable to perform his usual job or work eight hours per day. He further noted that he was not able to walk more than two to three blocks, sit or stand longer than 30 minutes, or push, pull, or lift anything weighing more than 10 pounds for longer than 30 minutes.

On February 10, 2017 OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions, to Dr. Arnold Goldman, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of appellant's employment-related injuries.

In a February 27, 2017 report, Dr. Goldman reviewed the history of injury and noted appellant's current complaints of low back, right knee, and right hip pain. He also noted a history

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

<sup>3</sup> The Board notes that following the January 2, 2020 merit decision, OWCP received additional evidence. 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.*

of diabetes. Upon examination of the hips, Dr. Goldman observed that appellant used a cane for ambulation, walked with an antalgic gait and an abductor lurch with respect to the right hip, and had limited range of motion of the right hip compared to the left hip. On examination of the lower back, he observed reduced forward flexion due to pain in the posterior superior iliac spine, positive straight leg raise right greater than left, and positive seated straight leg raise on the right. Upon examination of the right knee, Dr. Goldman observed positive Apley and McMurray signs. He diagnosed derangement of the low back, right hip, and right knee due to the January 17, 2012 employment injury and noted that the conditions were still active and his objective physical examination findings of positive straight leg raise on the right and reduced range of motion of the right hip and knee were consistent with those diagnoses. Dr. Goldman opined that appellant could not return to his preinjury duties, but could return to sedentary-duty work.

OWCP determined that a conflict in medical evidence existed between appellant's treating physician, Dr. Mian, and OWCP's second opinion examiner, Dr. Goldman, regarding diagnoses, need for further medical treatment, and continuing disability due to the accepted work injury. It referred appellant along with the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Alan M. Crystal, a Board-certified orthopedic surgeon, to serve as an impartial medical examiner (IME) to resolve the conflict. In selecting Dr. Crystal as the IME, OWCP included on the ME023-Appointment Schedule Notification that it followed its Medical Management Application (MMA). OWCP explained that it bypassed one physician within a 2.3-mile radius of appellant because he did not accept patients from OWCP, and that Dr. Crystal was the next physician within the same mile radius to accept patients.

In a February 22, 2018 report, Dr. Crystal indicated that he reviewed appellant's records, including MRI scan films of the right knee dated March 23 and April 28, 2015 and of the right hip dated March 23, 2015. He noted a history of diabetes for the past 30 years and that his claim was accepted for right hip contusion, right knee contusion, and lumbosacral sprain. Upon physical examination Dr. Crystal observed decreased extension and lateral flexion and negative seated and supine straight leg raise bilaterally of the lumbar spine; generalized weakness bilaterally consistent with diabetic neuropathy of the hips with reduced hip flexion on the right compared to the left; generalized weakness of the quadriceps and hamstrings consistent with diabetic neuropathy of the right knee; and bilateral medial osteophytes on palpation without tenderness or effusion and normal range of motion and ligament stability of the knees. He noted that appellant was wearing a brace on the right knee. Upon examination of the feet and ankles, Dr. Crystal observed generalized weakness and absent lower deep tendon reflexes consistent with diabetic neuropathy. He diagnosed a trip and fall injury with contusions to the right hip and knee and a lumbosacral sprain. Dr. Crystal opined that appellant was currently suffering from diabetic neuropathy, right knee osteoarthritis, and lumbar degenerative disease and facet arthritis, which were not caused or aggravated by the January 17, 2012 employment injury. He explained that contrary to the findings of the radiologist, his personal review of the March 23, 2012 right knee and hip MRI scans revealed no evidence of bone bruises or soft tissue edema. Dr. Crystal explained that the lack of edema or bone bruises in the right knee show that the preexisting arthritis was not injured at the time of the fall. He further explained that the lack of hip edema was evidence that no derangement was caused by the incident. Dr. Crystal concluded that appellant did not have any disability related to the accepted conditions but was restricted to light-duty work as it related to his diabetic neuropathy, right knee arthritis, and lumbar spine arthritis. He further opined that appellant was not in need of any further treatment for the accepted employment conditions.

In May 7 and November 9, 2018 progress notes, Dr. Mian noted appellant's complaints of severe pain in his low back, lower extremities left greater than right, right hip, and right knee. He diagnosed a herniated disc at L4-5, right hip sprain, and chondromalacia and tears of the medial meniscus and ACL of the right knee. Dr. Mian opined that appellant was totally disabled from all regular or modified-duty work.

In a November 13, 2018 development letter, OWCP advised appellant of the type of factual and medical evidence necessary to establish expansion of the acceptance of his claim to include additional employment-related conditions.

On February 27, 2019 OWCP requested clarification from Dr. Crystal regarding the nature and extent of appellant's employment-related conditions. In a March 31, 2019 addendum report, Dr. Crystal reviewed the radiologist's interpretation of January 20, 2012 x-rays and June 12, 2012 MRI scans of the lumbar spine and noted that his physical examination on February 22, 2018 failed to reveal any objective findings consistent with a herniated disc at L4-5 impinging a nerve root. He opined that the herniated disc was degenerative in nature and not causally related to the accepted January 17, 2012 employment injury. Dr. Crystal opined that appellant sustained a lumbosacral sprain, which was analogous to Dr. Goldman's diagnosis of derangement. Regarding the right hip, he reiterated that he did not find evidence of acetabular effusion on the March 23, 2012 MRI scan films and, therefore, the diagnoses of sprain and derangement were not causally related to the January 17, 2012 work injury. Regarding the right knee, Dr. Crystal opined that based upon his review of MRI scans and his physical examination findings, appellant did not sustain an ACL tear, meniscus tear, aggravation of arthritis, or derangement as a result of the employment injury. He further opined that the work-related lumbosacral sprain, right knee contusion, and right hip contusion were no longer active and had resolved, that appellant no longer had any disability associated with the accepted conditions, and that his current disability was due to the nonemployment-related conditions of diabetes and preexisting spine and knee degeneration.

By decision dated May 2, 2019, OWCP denied expansion of the acceptance of appellant's claim to include the additional conditions of lumbar radiculopathy, lumbar degenerative disc disease, diabetic neuropathy, chondromalacia, right knee osteoarthritis, L4-5 herniated disc, right hip sprain, and tear of the right medial meniscus and ACL. It found that the medical evidence of record was insufficient to establish causal relationship of the claimed medical conditions with regard to the accepted January 17, 2012 employment injury.

In a notice dated May 6, 2019, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because he no longer had disability or residuals causally related to his accepted January 17, 2012 employment injury. It found that the special weight of the medical evidence rested with Dr. Crystal who found that appellant no longer had any disability or residuals causally related to his accepted employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if he disagreed with the proposed termination. No additional evidence was received.

By decision dated June 12, 2019, OWCP finalized the notice of proposed termination of appellant's wage-loss compensation and medical benefits, effective June 13, 2019. It found that the special weight of medical evidence rested with Dr. Crystal, the IME, who indicated in

February 22, 2018 and March 31, 2019 reports, that appellant no longer had disability or residuals due to his January 17, 2012 employment injury.

On June 19, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 18, 2019.

By decision dated January 2, 2020, OWCP's hearing representative affirmed the June 12, 2019 termination decision.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of benefits.<sup>4</sup> It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>7</sup> 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.<sup>8</sup>

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or IME) who shall make an examination.<sup>9</sup> For a conflict to arise the opposing physicians' viewpoints must be of "virtually equal weight and rationale."<sup>10</sup> When OWCP has referred the case to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>11</sup>

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<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>7</sup> *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>8</sup> *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

<sup>9</sup> 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

<sup>10</sup> *H.B.*, Docket No. 19-0926 (issued September 10, 2020); *C.H.*, Docket No. 18-1065 (issued November 29, 2018); *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

<sup>11</sup> *S.S.*, Docket No. 19-0766 (issued December 13, 2019); *W.M.*, Docket No. 18-0957 (issued October 15, 2018); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

## ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 13, 2019, as he no longer had disability or residuals causally related to his accepted January 17, 2012 employment injury.

OWCP properly determined that there was a conflict in the medical opinion evidence between Dr. Mian, appellant's treating physician, and Dr. Goldman, an OWCP second opinion examiner, regarding the status of appellant's January 17, 2012 employment injury as to diagnosis, need for medical treatment, and disability causally related to the January 17, 2012 employment injury. It referred appellant, pursuant to 5 U.S.C. § 8123(a), to Dr. Crystal for an impartial medical examination and an opinion to resolve the conflict.

In a February 22, 2018 report, Dr. Crystal reviewed appellant's history of injury, provided examination findings, and noted that appellant's claim was accepted for right hip contusion, right knee contusion, and lumbosacral sprain. He opined that he was currently suffering from diabetic neuropathy, right knee osteoarthritis, and lumbar degenerative disc disease, and facet arthritis, which were not causally related to the January 17, 2012 employment injury. Dr. Crystal explained that contrary to the findings of the radiologist, he found no evidence of bone bruises or soft tissue edema on the March 23, 2012 right knee and hip MRI scans. He further explained that the lack of edema or bone bruises in the right knee showed that the preexisting arthritis was not injured at the time of the fall and that the lack of hip edema was evidence that no derangement was caused by the employment injury.

In his March 31, 2019 addendum report, Dr. Crystal indicated that imaging studies of appellant's right knee, low back, and right hip did not establish additional conditions causally related to the January 17, 2012 employment injury. He opined that the work-related lumbosacral sprain, right knee contusion, and right hip contusion were no longer active and had resolved and, therefore, appellant no longer had any disability associated with the accepted employment conditions. Dr. Crystal concluded that any work restrictions were due to appellant's preexisting degenerative conditions and diabetic neuropathy, and not the January 17, 2012 employment injury.

The factors that comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of physical examination, the accuracy, or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>12</sup> The Board finds that Dr. Crystal's opinions constitute the special weight of the medical opinion evidence and establish that appellant no longer had employment-related disability or residuals causally related to the accepted January 17, 2012 employment injury. Dr. Crystal based his opinions on a proper factual and medical history, and physical examination findings. He noted that appellant's physical examination revealed that the accepted employment-related conditions had resolved and that appellant's disability and work restrictions were due to nonemployment-related conditions.

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<sup>12</sup> See *P.J.*, Docket No. 22-0905 (issued November 15, 2022); *K.R.*, Docket No. 22-0019 (issued July 11, 2022); *Nicolette R. Kelstrom*, 54 ECAB 570 (2003); *Anna M. Delaney*, 53 ECAB 384 (2002).

Accordingly, OWCP properly relied on his opinions in terminating appellant's wage-loss compensation and medical benefits.

On appeal, counsel argues that Dr. Crystal was not properly selected as the IME. Dr. Crystal was selected as the IME, to resolve the conflict in medical opinion, pursuant to 5 U.S.C. § 8123(a). The Board has placed great importance on the appearance, as well as the fact of impartiality in selecting an IME, and only if the selection procedures designed to achieve impartiality are scrupulously followed may the selected physician carry the special weight accorded to an IME.<sup>13</sup>

The Board finds that the selection of Dr. Crystal was made in accordance with OWCP's procedures.<sup>14</sup> The January 19, 2018 Form ME023 contains documents and explanations that Dr. Crystal was the first physician selected to agree to the appointment, and that the selection was properly made in accordance with its MMA. Accordingly, counsel's argument that Dr. Crystal was not properly selected lacks merit.

### CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 13, 2019, as he no longer had disability or residuals causally related to his accepted January 17, 2012 employment injury.<sup>15</sup>

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<sup>13</sup> *N.L.*, Docket No. 18-0743 (issued April 10, 2019); *T.D.*, Docket No. 16-0028 (issued November 28, 2016); *L.W.*, 59 ECAB 471, 478 (2008).

<sup>14</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.5 (May 2013). Congress did not address the manner by which an impartial medical referee is to be selected. Rather, this was left to the expertise of the Director in administering the compensation program created under FECA. Unlike second opinion physicians, the selection of referee physicians is made from a strict rotational system. In turn, the Director has delegated authority to each OWCP district for selection of the referee physician by use of the Medical Management Application (MMA) within iFECS. Selection of the referee physician is made through use of the application by a medical scheduler. The claims examiner may not dictate the physician to serve as the referee examiner. The medical scheduler inputs the claim number into the application, from which the claimant's home zip code is loaded. The scheduler chooses the type of examination to be performed (second opinion or impartial referee) and the applicable medical specialty. The next physician in the roster appears on the screen and remains until an appointment is scheduled or the physician is bypassed. If the physician agrees to the appointment, the date and time are entered into the application. Upon entry of the appointment information, the application prompts the medical scheduler to prepare a Form ME023, appointment notification report for imaging into the case file. Once an appointment with a medical referee is scheduled the claimant and any authorized representative is to be notified.

<sup>15</sup> The Board notes that the employing establishment issued an undated Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 2, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 29, 2023  
Washington, DC

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

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

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