

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

_____)
P.A., Appellant)

and)

U.S. POSTAL SERVICE, DOWNTOWN)
LAKELAND POST OFFICE, Lakeland, FL,)
Employer)
_____)

**Docket No. 21-0658
Issued: March 13, 2023**

Appearances:

Joanne Wright, for the appellant¹
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 March 25, 2021 appellant, through his representative, filed a timely appeal from an October 8, 2020 merit decision of the Office of Workers’ Compensation Programs (OWCP). Pursuant to the Federal Employees’ Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

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 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.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the October 8, 2020 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 properly terminated appellant's wage-loss compensation and medical benefits, effective May 5, 2020, as he no longer had disability or residuals causally related to his accepted employment injury; and (2) whether appellant has met his burden of proof to establish continuing employment-related disability or residuals on or after May 5, 2020 due to his accepted employment injury.

FACTUAL HISTORY

On June 5, 2017 appellant, then a 61-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained hidrocystomas of the face causally related to factors of his federal employment. He stopped work on May 10, 2016. OWCP accepted the claim for an aggravation of hidrocystomas of the face. It paid appellant wage-loss compensation on the supplemental rolls for intermittent disability from work from August 26 through September 30, 2016.

In a report dated July 14, 2016, Dr. Linwood D. Bond, Jr., a Board-certified dermatologist, advised that appellant had "a chronic medical condition. This condition is that of multiple hidrocystomas on his face. These are benign neoplasms; however, they can become engorged, swollen, and painful when exposed to heat and hot temperatures." Dr. Bond opined that appellant could "continue work without difficulty as long as he is in a temperature-controlled environment.... If he continues to be exposed to these hot temperatures, his medical condition will persist, and continue to be painful, and possibly get worse."

On July 18, 2016 Dr. David Sable, a Board-certified dermatologist, evaluated appellant for hidrocystomas, which he explained was a "condition related to the sweat glands." He advised that the etiology of the lesions was unknown but that the lesions could enlarge and become irritated with exposure to heat, humidity, sunlight, and that facial sweating could cause additional lesions. Dr. Sable recommended that appellant work in an air-conditioned indoor position "to avoid sweating of the face, which is known to exacerbate the condition causing significant tenderness."

On August 26, 2016 appellant returned to work in the private sector in temperature-controlled positions. OWCP paid him wage-loss compensation on the supplemental rolls for partial disability based on his actual earnings beginning October 1, 2016, and on the periodic rolls beginning November 11, 2018.

In a July 28, 2017 report, Dr. Bond indicated that a 2018 biopsy had confirmed that appellant had hidrocystomas and noted that the cause was unknown. He related that heat exposure caused the lesions to become larger and painful. Dr. Bond advised that surgical excision was not an option due to the number of hidrocystomas on appellant's face. He related that delivering mail in hot temperatures had significantly aggravated his condition.

A notification of personnel action (PS Form 50) indicated that appellant had retired on disability effective September 13, 2017.

On October 4, 2017 OWCP requested that Dr. Bond address whether appellant had sustained a temporary or permanent aggravation of his preexisting condition of hidrocystomas of the face and provide updated work restrictions.

On October 11, 2018 OWCP referred appellant to Dr. Neil Sandhu, a Board-certified dermatologist, for a second opinion examination.

In a report dated November 5, 2018, Dr. Sandhu discussed appellant's complaints of new growths on his face every few months to years that were sometimes painful and itchy. He related, "These lesions are hidrocystomas and are not caused by work environment. Hot and humid environments can exacerbate the lesions and cause irritation, no other factors are associated with worsening or causation of the condition," which he advised was genetic. Dr. Sandhu opined that appellant could resume work.

In a report dated August 22, 2019, Dr. Bond asserted that appellant's condition of multiple facial hidrocystomas was chronic, but could be controlled if he remained in a cool environment. He noted that findings included "vesicles and bumps on his face and neck that enlarge when exposed to heat." Dr. Bond related, "Theoretically, [appellant] could return to work; however, he would have restrictions, which would include working in a cool, air-condition environment."

On December 31, 2019 OWCP referred appellant, along with a statement of accepted facts (SOAF) and series of questions, to Dr. Eniola Owi, Board-certified in occupational medicine, for a second opinion examination.

In a report dated February 20, 2020, Dr. Owi discussed appellant's history of a rash and bumps on his face that had increased over time and that became swollen and painful in high humidity and heat. She indicated that she had reviewed the SOAF and the medical evidence of record. On examination, Dr. Owi found a vesicular rash on the cheeks that was not currently inflamed or tender. She diagnosed a history of hidrocystomas of the face and an accepted diagnosis of an aggravation of hidrocystomas of the face. Dr. Owi related that the work factors of high humidity and heat had temporarily aggravated appellant's facial hidrocystomas. She noted that medical records from the dermatologists indicated that hidrocystoma was a progressive and chronic disorder of uncertain etiology and without a cure. Dr. Owi opined that the employment-related temporary aggravation of appellant's condition had ceased in 2016 when he stopped work as he was no longer exposed to heat and humidity delivering mail. She found that he could not return to his usual employment because he could not work in hot and humid conditions without irritation and swelling of his facial lesions. Dr. Owi responded in the affirmative that appellant's "present level of disability [was] a direct result of the accepted work-related condition outlined in the SOAF."

On March 26, 2020 OWCP notified appellant of its proposed termination of his wage-loss compensation and medical benefits as the weight of the evidence established that he no longer had any employment-related disability due to his accepted employment injury. It afforded him 30 days to submit additional evidence or argument if he disagreed with the proposed termination.

In an April 15, 2020 statement, appellant maintained that his condition had not ceased, noting that Dr. Owi had found that he had a rash and soreness on his cheek bones. He further contended that his condition was employment related. Appellant discussed Dr. Owi's finding that his condition was aggravated by being in a hot and humid environment while delivering mail and that he was unable to resume his usual employment.

By decision dated May 5, 2020, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that Dr. Owi's opinion represented the weight

of the evidence and established that he had no further disability or residuals of his accepted employment injury.

On May 13, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on August 11, 2020. Appellant's representative provided the history of injury and her review of the medical evidence. Appellant described his private-sector employment. He advised that he did not require significant medical treatment as his condition had no cure. Appellant asserted that the employing establishment had failed to offer him work within his restrictions.

In a report dated August 20, 2020, Dr. Bond advised that appellant had chronic multiple facial hidrocystomas that required him to be in a cool environment to avoid painful enlargement of vesicles and bumps on his face and neck. He indicated that there was no cure for the condition. Dr. Bond found that appellant could return to work with restrictions of "working in a cool, air-conditioned environment." He advised that he had seen appellant only for annual examinations as there was no adequate medical treatment for his condition.

On August 25, 2020 appellant's representative discussed Dr. Bond's finding that appellant required a temperature-controlled environment, asserting that this supported that he had employment-related residuals of his accepted work injury.

By decision dated October 8, 2020, OWCP's hearing representative affirmed the May 5, 2020 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁴ 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 the employment.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

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

⁴ *R.H.*, Docket No. 19-1064 (issued October 9, 2020); *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

⁵ *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁶ *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

⁷ *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

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

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 5, 2020.

OWCP referred appellant to Dr. Owi for a second opinion examination to determine the status of his accepted work conditions and capacity for work. By decision dated May 5, 2020, it terminated his compensation and medical benefits, finding that the opinion of Dr. Owi constituted the weight of the evidence and established that appellant no longer had disability or residuals due to his employment-related aggravation of hidrocystomas.

The Board finds, however, that Dr. Owi's opinion is insufficient to justify the termination of appellant's wage-loss compensation and medical benefits. In a report dated February 20, 2020, Dr. Owi reviewed the SOAF provided by OWCP and the medical evidence of record. She obtained a history of appellant experiencing a rash and bumps on his face that had increased over time and became swollen and painful in heat and humidity. Dr. Owi noted that OWCP had accepted an aggravation of hidrocystomas of the face. She found that working in high humidity and heat had temporarily aggravated appellant's hidrocystomas of the face. Dr. Owi noted that, according to the dermatologists, the condition was progressive, had no clear etiology, and had no cure. She opined that the employment-related temporary aggravation of appellant's hidrocystomas had ceased when he stopped work in 2016. Dr. Owi found that he was unable to perform his usual employment because he could not work in hot and humid conditions and attributed his current disability to the work factors provided in the SOAF. While she indicated the employment-related aggravation of appellant's condition had ceased, she further advised that his current level of disability was directly related to the accepted employment condition as set forth in the SOAF. As Dr. Owi's opinion regarding whether appellant had any continuing disability due to his accepted employment injury is equivocal in nature, it is not of a sufficient degree of medical certainty to support a termination of compensation.⁹ The Board, consequently, finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 5, 2020.¹⁰

⁹ See *W.H.*, Docket No. 16-1047 (issued October 25, 2016); *A.H.*, Docket No. 15-0557 (issued May 8, 2015).

¹⁰ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 13, 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