

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

N.R., Appellant)	
)	
and)	Docket No. 23-0019
)	Issued: November 17, 2023
U.S. POSTAL SERVICE, OTHELLO POST)	
OFFICE, Othello, WA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 6, 2022 appellant filed a timely appeal from an August 31, 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 the case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the August 31, 2022 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.*

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 31, 2022, as she no longer had disability or residuals causally related to her accepted March 15, 2018 employment injury.

FACTUAL HISTORY

On March 29, 2018 appellant, then a 42-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on March 15, 2018, she injured her lower back, left hip, and left buttock when she pushed a hamper full of mail up a ramp while in the performance of duty.³ OWCP accepted the claim for sprain of muscle, fascia, and tendon of the lower back. It later expanded its acceptance of the claim to include lumbar spondylolysis. OWCP paid appellant wage-loss compensation on the supplemental rolls effective May 6, 2018, and on the periodic rolls effective July 22, 2018.

On October 19, 2018 appellant underwent OWCP-authorized surgery to her lumbar spine by Dr. Miguel A. Schmitz, a Board-certified orthopedic surgeon, including posterior spinal fusion and transforaminal lumbar interbody fusion of L4-L5; laminectomy at L3-L4 and L4-L5 with bone grafting; left-sided facetectomy at L4-L5; insertion of a transforaminal lumbar interbody fusion cage into the L4-L5 interspace; and insertion of nonsegmental pedicles of fixation into the bilateral pedicles of L4 and L5. Dr. Schmitz diagnosed grade 1 spondylolisthesis, central canal stenosis at L3-L4 and L4-L5, chronic lumbar pain, and obesity.

In a report dated November 5, 2020, Dr. Schmitz indicated that appellant related ongoing problems in the left hip, reduced left leg pain, and mostly resolved low back pain following surgery. He performed a physical examination and noted no clinical findings of radiculopathy.

In duty status reports (Form CA-17) dated November 7, 2020, Dr. Schmitz noted that appellant could return to work, noting restrictions.

In a letter to appellant dated January 4, 2022, OWCP informed her that periodic medical reports were required for all cases for which compensation is paid. It requested that she have her physician respond to a series of questions and provide a detailed report to OWCP within 30 days of the date of the letter. OWCP also requested that the physician complete an accompanying attending physician's report (Form CA-20), indicating whether appellant was able to return to work. It afforded her 30 days to submit the requested information.

On March 10, 2022 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. Robin Simon-Mark, an osteopathic

³ OWCP assigned the present claim OWCP File No. xxxxxx487. Appellant also has a prior claim under OWCP File No. xxxxxx582 accepted for a February 15, 2018 spondylolisthesis at L4-L5. OWCP File Nos. xxxxxx582 and xxxxxx487 were administratively combined by OWCP, with the latter serving as the master file.

orthopedic surgeon, for a second opinion to determine whether appellant continued to suffer from residuals and/or disability causally related to her accepted work-related injury.

In a report dated March 22, 2022, Dr. Schmitz noted that appellant related her back felt very good but that she had ongoing issues with the left hip. He performed a physical examination, which revealed pain with flexion and internal rotation of the left hip, a limp, decreased lumbar flexion, extension, and rotation, and pain during lumbar spine active range of motion testing. Dr. Schmitz diagnosed pain in the lumbar spine, acetabular labrum tear of the left hip, lumbar spondylosis with myelopathy, spondylolisthesis at L4-L5, and spinal stenosis at L3 through L5.

In a Form CA-17 dated March 22, 2022, Dr. Schmitz diagnosed an injury to the lumbar spine at L4-L5 and released appellant to return to work with continuous lifting up to five pounds, intermittent lifting up to 20 pounds for up to two hours per day, sitting, standing, walking, climbing, kneeling, bending, and stooping for up to two hours per day, and no twisting.

Dr. Simon-Mark, in a March 24, 2022 report, noted her review of the SOAF and appellant's medical records. She also discussed appellant's current complaints of left-sided low back pain, left hip pain, and radicular symptoms to her left foot, and that she was taking a muscle relaxer and using heat on her back. On physical examination, Dr. Simon-Mark reported reduced lumbar side bending on the left compared to the right; tenderness in the left lumbar musculature, sacroiliac joint, and left greater trochanter; decreased sensation to palpation in the lateral aspect of the left thigh, left calf, and first dorsal webspace on the left compared to the right; pain in the lumbar spine with hip extension; and pain in the left hip with hip flexion, abduction, and internal rotation. She diagnosed low back strain, lumbar spondylolysis, and status post lumbar fusion. Dr. Simon-Mark found that the accepted work-related conditions had resolved and indicated that appellant had no positive objective findings to indicate that her condition had not resolved. She also opined that "the subjective complaints correspond with the objective findings." Dr. Simon-Mark found no need for further medical treatment and that appellant was capable of returning to her date-of-injury city carrier job. In an accompanying work capacity evaluation (Form OWCP-5c), she found that appellant could perform her usual job with no restrictions.

By notice dated July 5, 2022, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Simon-Mark's opinion that the accepted employment-related conditions had ceased without residuals or disability. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

OWCP thereafter received correspondence from J.B., an employing establishment postmaster, and a statement by appellant regarding her duty status.

By decision dated August 31, 2022, OWCP terminated appellant's wage-loss and medical compensation benefits, effective that date. It found that Dr. Simon-Mark's opinion constituted the weight of the medical opinion evidence and established that appellant no longer had disability or residuals causally related to the accepted March 15, 2018 employment injury.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification 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 compensation.⁷ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁸

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 31, 2022, as she no longer had disability or residuals causally related to her accepted employment conditions.

OWCP terminated appellant's wage-loss compensation and medical benefits based on the March 24, 2022 report of Dr. Simon-Mark, the second opinion physician. Dr. Simon-Mark noted her review of the SOAF and that appellant's claim was accepted for strain of muscle, fascia, and tendon of the lumbar spine and lumbar spondylolysis. She also noted appellant's current complaints of left-sided low back pain, left hip pain, and radicular symptoms to her left foot, and that she was taking a muscle relaxer and using heat on her back. On physical examination, Dr. Simon-Mark documented reduced lumbar side bending, areas of tenderness and decreased sensation, and pain in the lumbar spine with hip extension and in the left hip with extension, flexion, and rotation. She found that "the subjective complaints correspond with the objective findings." Dr. Simon-Mark then opined that the accepted work-related condition had resolved, that appellant could return to her date-of-injury city carrier position with no restrictions, and that there was no need for further medical treatment.

Dr. Simon-Mark's opinion was equivocal and conclusory in nature and did not contain sufficient medical reasoning to establish that appellant no longer had residuals or disability due to

⁴ *R.G.*, Docket No. 22-0165 (issued August 11, 2022); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ *R.L.*, Docket No. 22-1175 (issued May 11, 2023); *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *P.K.*, Docket No. 22-1345 (issued June 28, 2023); *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁸ *See A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

her accepted employment injury.⁹ The Board thus finds that OWCP failed to meet its burden of proof to terminate her wage-loss compensation and medical benefits.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 31, 2022.

ORDER

IT IS HEREBY ORDERED THAT the August 31, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 17, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁹ *C.G.*, Docket No. 23-0013 (issued April 24, 2023); *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *A.G.*, Docket No. 20-0187 (issued December 31, 2020); *see J.W.*, Docket No. 19-1014 (issued October 24, 2019); *S.W.*, Docket No. 18-0005 (issued May 24, 2018).