

³ The Board notes that, following the February 23, 2023 decision, appellant submitted additional evidence to OWCP. 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 has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 9, 2021, as she no longer had disability or residuals causally related to her accepted employment conditions; and (2) whether appellant has established continuing disability or residuals on or after February 9, 2021 causally related to her accepted employment conditions.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 7, 2016 appellant, then a 49-year-old mail processor, filed an occupational disease claim (Form CA-2) alleging that she developed lumbar, cervical, lower extremities, shoulder, and carpal tunnel syndrome conditions due to factors of her federal employment, which included repetitive movements of lifting, feeding of mail, and reaching up to six feet to get mail out of equipment and containers. She noted that she first became aware of her condition on June 6, 2015 and realized their relation to factors of her federal employment on September 24, 2015. W.J., appellant's supervisor, indicated that appellant was placed on light duty beginning July 6, 2015. OWCP assigned this claim File No. xxxxxx747.

The record indicates that appellant had a prior traumatic injury claim with a February 7, 2001 date of injury, which OWCP accepted for lumbosacral sprain under OWCP File No. xxxxxx604 as a result of sweeping mail from a machine while in the performance of duty. On April 8, 2005 OWCP expanded the acceptance of her claim to include lumbar herniated disc at L5-S1. Appellant returned to full-duty work in 2007.

By decisions dated July 15, 2016, June 6, 2017, and March 30, 2018, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted factors of her federal employment.

Appellant, through counsel, appealed to the Board. By decision dated March 6, 2019, the Board set aside OWCP's March 30, 2018 decision and remanded the case for further development of the medical evidence to determine whether she sustained cervical and lumbar conditions causally related to the accepted factors of her federal employment.⁵

On remand, OWCP referred appellant, the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion evaluation.

On August 20, 2019 Dr. Sultan evaluated appellant for the purpose of the second opinion evaluation. In his report, he documented her physical examination findings, discussed history of

⁴ Docket No. 18-1119 (issued March 6, 2019).

⁵ *Id.*

injury, and summarized various diagnostic studies. Dr. Sultan opined that appellant sustained musculoskeletal strain of the cervical spine, left shoulder, right hand, and thoracolumbar spine as a result of her repetitive employment duties working as a flat sorting machine clerk. He explained that she aggravated preexisting conditions involving her cervical, thoracic and lumbar spine, which had ceased as she no longer had disability or residuals of her cervical spine, thoracolumbar spine, left shoulder, and right hand.

By decision dated August 30, 2019, OWCP accepted appellant's claim for strain of muscle, fascia and tendon of the left shoulder and upper arm, and strain of muscle, fascia and tendon of the right wrist and hand.

In a September 9, 2019 addendum report, Dr. Sultan diagnosed status post musculoskeletal sprain/strain of the cervical spine, left shoulder, right hand, right wrist and thoracolumbar spine, which had clinically resolved. He further reported that appellant was employed as a mail processing clerk whose employment duties involved lifting, reaching, and pushing buttons, which resulted in musculoskeletal issues. Dr. Sultan opined that her conditions had resolved, and she no longer suffered from disability or residuals of her work-related conditions.

By decision dated October 24, 2019, OWCP expanded the acceptance of appellant's claim to include the additional conditions of sprain of left shoulder joint, sprain of right wrist and hand, sprain of ligaments of cervical spine, strain of muscle, fascia and tendon at neck level, sprain of ligaments of thoracic spine, and strain of muscle and tendon of backwall of thorax. It determined that the sprains and strains of the left shoulder, right hand and wrist, cervical spine, and thoracic spine had resolved as Dr. Sultan, OWCP's second opinion physician, determined that she no longer had disability or residuals as a result of her accepted work-related conditions.

On November 13, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on July 9, 2020. In support of her claim, she submitted additional diagnostic studies and medical reports, from Dr. Andrew Tarleton, a Board-certified orthopedic surgeon.

By decision dated September 24, 2020, OWCP's hearing representative set aside the October 24, 2019 decision and remanded the claim for further development. She determined that appellant's current claim should be combined with her February 7, 2001 claim, which was accepted for lumbosacral sprain under OWCP File No. xxxxxx604. The hearing representative instructed OWCP to provide a copy of both claim files to Dr. Sultan for review and determination as to whether appellant's accepted sprains/strains had resolved, to be followed by a *de novo* decision.

On October 6, 2020 OWCP combined OWCP File Nos. xxxxxx604 and xxxxxx747, designating the latter as the master file.

On October 6 and November 18, 2020, OWCP requested Dr. Sultan review an updated SOAF and series of questions for an addendum to his report to determine if appellant's work-related conditions had resolved.

The November 18, 2020 SOAF discussed appellant's February 7, 2001 claim under OWCP File No. xxxxxx604.⁶

In an accompanying November 18, 2020 questionnaire, OWCP requested Dr. Sultan review the medical evidence from OWCP File Nos. xxxxxx604 and xxxxxx747 and provide a well-reasoned medical opinion regarding whether appellant's accepted sprains/strains had resolved. The questionnaire noted that appellant's claim under OWCP File No. xxxxxx604 was accepted for lumbosacral sprain.

In addendums dated October 15 and December 16, 2020, Dr. Sultan reported that appellant's subjective complaints did not correspond with the objective examination findings and further noted that she had undergone multiple diagnostic studies of the cervical and lumbar spine, which also did not correspond to the objective findings from his examination. He opined that her work-related sprains/strains of the left shoulder, right hand and wrist, cervical spine, and thoracolumbar spine had resolved, and she required no further work restrictions.

By notice dated January 7, 2021, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because she no longer had disability or residuals causally related to the accepted employment injury. It found that the weight of the medical evidence rested with Dr. Sultan who found that she no longer had any disability or residuals causally related to her accepted employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination of benefits.

Appellant submitted a February 3, 2021 medical report from Dr. Tarleton in support of her claim. He reported that he disagreed with Dr. Sultan's findings and opined that appellant's "condition has not resolved and will not resolve." Dr. Tarleton reported that the evidence supporting his opinion was "decreased range of motion, ..., the [magnetic resonance imaging] findings and the [electromyogram] findings. Everything is consistent." He further opined that appellant could not return to her date-of-injury position as it "would be completely unsafe."

By decision dated February 8, 2021, OWCP finalized the notice of proposed termination of appellant's wage-loss compensation and medical benefits, effective February 9, 2021. It found that the weight of the medical evidence rested with Dr. Sultan, the second opinion examiner, who indicated that she no longer had disability or residuals due to her accepted employment injury.

On June 2, 2021 appellant, through counsel, requested reconsideration. Counsel argued that appellant's work-related injuries had not resolved as evidenced in Dr. Tarleton's reports. Appellant submitted additional medical reports and diagnostic studies in support of her claim.

By decision dated August 31, 2021, OWCP denied modification of its February 8, 2021 decision.

On January 15, 2022 appellant, through counsel, requested reconsideration before OWCP. By decision dated April 8, 2022, OWCP denied modification of the August 31, 2021 decision.

⁶ The SOAF also noted that, under OWCP File No. xxxxxx522, appellant's July 18, 2018 claim was accepted for contusion of right hand and wrist after she hit her hand on a postal container while picking up a tray of letters in the performance of duty. OWCP has not administratively combined this claim with the claims under OWCP File No. xxxxxx747.

On December 1, 2022 appellant, through counsel, requested reconsideration before OWCP.

By decision dated February 23, 2023, OWCP denied modification of the April 8, 2022 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁷ After it has been determined that, an employee has a disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁸ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁹

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹⁰ To terminate authorization for medical treatment, OWCP must establish that he or she no longer has residuals of an employment-related condition which require further medical treatment.¹¹

ANALYSIS -- ISSUE 1

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 9, 2021.

OWCP based its decision to terminate appellant's wage-loss compensation and medical benefits on the opinion of Dr. Sultan, OWCP's second opinion physician, who found that the accepted conditions had ceased with no residuals, and that appellant no longer had a disability causally related to the accepted employment injury.

The Board finds, however, that the SOAF provided to Dr. Sultan on November 18, 2020 was deficient, as it failed to note all of the accepted conditions.¹² OWCP's November 18, 2020 questionnaire and SOAF noted that appellant's claim was accepted for lumbosacral sprain under OWCP File No. xxxxxx604. However, the record reflects that the acceptance of appellant's claim

⁷ *Z.D.*, Docket No. 19-0662 (issued December 5, 2019); *see R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁸ *See R.P.*, *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁹ *See P.T.*, Docket No. 21-0328 (issued May 2, 2022); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

¹⁰ *Z.D.*, *supra* note 7; *T.P.*, 58 ECAB 524 (2007); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

¹¹ *T.C.*, Docket No. 20-1163 (issued July 13, 2021); *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake*, *id.*

¹² *L.F.*, Docket No. 22-0754 (issued October 14, 2022); *R.A.*, Docket No. 21-1219 (issued May 3, 2022).

in OWCP File No. xxxxxx747 was expanded to include the additional condition of lumbar herniated disc at L5-S1 which was not listed on the SOAF.

OWCP's procedures dictate that, when an OWCP medical adviser, second opinion specialist, or impartial medical examiner renders a medical opinion based on a SOAF, which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.¹³ OWCP did not provide Dr. Sultan with a complete and accurate SOAF as it did not identify all of appellant's accepted conditions.¹⁴ The Board finds that, as Dr. Sultan based his medical report on an inaccurate SOAF, the probative value of his opinion is diminished.¹⁵

Once OWCP undertook development of the record, it was required to complete development of the record by procuring medical evidence that would resolve the relevant issue in the case.¹⁶ As OWCP did not provide an accurate SOAF to the second opinion physician, the Board finds that it did not meet its burden of proof in terminating appellant's wage-loss compensation and medical benefits.¹⁷

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 9, 2021.¹⁸

¹³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); see *K.L.*, Docket No. 21-0104 (issued February 24, 2022); *S.C.*, Docket No. 18-1011 (issued March 23, 2020).

¹⁴ *R.G.*, Docket No. 22-0627 (issued November 2, 2022).

¹⁵ *B.C.*, Docket No. 20-1672 (issued February 8, 2023); *P.C.*, Docket No. 20-0935 (issued February 19, 2021). An OWCP referral physician's findings must be based on the factual underpinnings of the claim, as set forth in the SOAF. *Supra* note 13 at Chapter 2.809.2c (September 2009).

¹⁶ *D.C.*, Docket No. 22-0020 (issued April 24, 2023).

¹⁷ *J.C.*, Docket No. 21-1401 (issued July 20, 2023); *K.S.*, Docket No. 22-1011 (issued January 5, 2023).

¹⁸ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 29, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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