

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

S.P., Appellant)	
)	
and)	Docket No. 23-0537
)	Issued: October 31, 2023
DEPARTMENT OF TRANSPORTATION,)	
FEDERAL AVIATION ADMINISTRATION,)	
JOHN F. KENNEDY INTERNATIONAL)	
AIRPORT, Jamaica, NY, Employer)	

<p><i>Appearances:</i> Thomas S. Harkins, Esq., for the appellant¹ Office of Solicitor, for the Director</p>	<p><i>Case Submitted on the Record</i></p>
---	--

DECISION AND ORDER

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

JURISDICTION

On March 11, 2023 appellant, through counsel, filed a timely appeal from a November 9, 2022 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.

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 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.*

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 11, 2022, as she no longer had disability or residuals causally related to her accepted November 4, 1993 employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals on or after February 11, 2022 causally related to her accepted November 4, 1993 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On November 5, 1993 appellant, then a 34-year-old secretary, filed a traumatic injury claim (Form CA-1) alleging that on November 4, 1993 she sustained injury when she twisted her back after catching her blazer on a trash container while in the performance of duty. She stopped work on November 8, 1993. OWCP accepted appellant's claim for cervical and lumbar sprains. It paid her wage-loss compensation on the supplemental rolls effective June 9, 2001, and on the periodic rolls effective June 16, 2002.

On April 7, 2021 OWCP referred appellant and the case record, along with a series of questions and a statement of accepted facts, for a second opinion examination and evaluation with Dr. Leon Sultan, a Board-certified orthopedic surgeon. It requested that he provide an opinion regarding whether appellant continued to have disability or residuals causally related to her accepted November 4, 1993 employment injury.

In an April 22, 2021 report, Dr. Sultan discussed appellant's factual and medical history, and provided a description of the November 4, 1993 incident when she caught her jacket on the handle of a trash container and twisted her back. He reported the findings of his physical examination, noting that the examination revealed lumbar spine and cervical spine low-grade motion restriction without any upper or lower extremity neurological impairment. Dr. Sultan indicated that he detected no active paracervical muscle spasm, and that there were no trigger points on palpation over the right and left trapezius musculature. He advised that he could detect no active parathoracic or paralumbar muscle spasm, sacroiliac joints were nontender to palpation, heel/toe standing was unimpaired, and the Trendelenburg test was negative on both sides. Sensory testing in both lower extremities was normal. Dr. Sultan opined that the motion restrictions of appellant's neck and low back were secondary to her nonwork-related underlying degenerative changes involving her neck and lower back. He noted that her subjective complaints did not correspond to the objective findings found on examination. Dr. Sultan opined that appellant's cervical and lumbar sprains had completely resolved and indicated that she could return to her date-of-injury job as a secretary.

In a notice dated November 9, 2021, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits as she no longer had disability or residuals causally related to

³ Docket No. 95-2305 (issued September 17, 1996).

her accepted November 4, 1993 employment injury. It found that the weight of the medical evidence rested with the opinion of Dr. Sultan. OWCP afforded appellant 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

Appellant submitted medical evidence in response to the notice of proposed termination, some of which had previously been of record.

In a June 29, 2021 narrative report, Dr. Seema Nambiar, a Board-certified physiatrist and pain management specialist, indicated that appellant had been on permanent disability since she fell down stairs while at work in 1993. She opined that appellant was unable to work due to persistent neck and back pain, which caused discomfort and spasm. Dr. Nambiar opined that appellant's condition was still a result of the "work-related injury and condition." In a June 29, 2021 work capacity evaluation (Form OWCP-5c), she indicated that appellant required work restrictions due to severe neck and low back pain. In a June 30, 2021 narrative report, Dr. Itzhak Haimovic, a Board-certified neurologist, indicated that appellant injured her low back and neck due to a work injury in 1993 and had experienced severe, persistent pain ever since. In a June 30, 2021 Form OWCP-5c, he recommended various work restrictions. In a December 2, 2021 report, Dr. Bruce S. Stein, a Board-certified rheumatologist, posited that appellant's work injury of falling down stairs caused multiple herniated discs and arthritis.

Appellant submitted the results of diagnostic testing, including January 22, 2020 and February 17, 2021 magnetic resonance imaging (MRI) scans of the lumbar spine, a February 12, 2021 MRI scan of the cervical spine, and February 22 and 24, 2021 electromyogram/nerve conduction velocity (EMG/NCV) studies of the extremities.

Appellant also submitted November 22 and December 6, 2021, and February 5, 2022 reports wherein Dr. Anthony DeRiggi, a chiropractor, diagnosed segmental and somatic dysfunction of the spine, cervical and lumbar radiculopathies, myofascial pain with jump sign, and pain in the thoracic spine.

By decision dated February 11, 2022, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective the same date, as she no longer had disability or residuals causally related to her accepted November 4, 1993 employment injury. It relied on the opinion of Dr. Sultan in terminating appellant's wage-loss compensation and medical benefits.

On March 31, 2022 appellant, through counsel, requested reconsideration of the February 11, 2022 decision.

Appellant submitted a January 31, 2022 report, wherein Dr. Haimovic opined that her permanent and progressive symptoms were related to a November 4, 1993 fall down a flight of stairs at work because she had no symptoms prior to the November 4, 1993 fall down stairs. In a September 2, 2022 report, Dr. Haimovic diagnosed persistent pain in both upper extremities, consistent with bilateral C7 radiculopathy, and bilateral L4 radiculopathy. On January 17, 2022 he diagnosed bilateral L5-S1 radiculopathy and myofascial pain with jump sign.

By decision dated June 28, 2022, OWCP denied modification of the February 11, 2022 termination decision.

On August 15, 2022 appellant, through counsel, requested reconsideration of the June 28, 2022 decision.

Appellant submitted a May 4, 2022 report in which Dr. Richard Obedian, a Board-certified orthopedic surgeon, indicated that the November 4, 1993 employment incident occurred when she “fell down a flight of stairs.” Dr. Obedian opined that her cervical and lumbar conditions, including disc herniations at C5-6 and L2-3 and spinal stenosis, were causally related to this November 4, 1993 fall.

By decision dated November 9, 2022, OWCP denied modification of its June 28, 2022 decision.

LEGAL PRECEDENT -- ISSUE 1

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁴ OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ OWCP’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

ANALYSIS -- ISSUE 1

The Board finds OWCP has met its burden of proof to terminate appellant’s wage-loss compensation and medical benefits, effective February 11, 2022, as she no longer had disability or residuals causally related to her accepted November 4, 1993 employment injury.

OWCP referred appellant to Dr. Sultan for a second opinion regarding the status of her accepted employment-related conditions. In his April 22, 2021 report, Dr. Sultan indicated that, upon physical examination, he detected no active paracervical muscle spasm, and that there were no trigger points on palpation over the right and left trapezius musculature. He advised that he could detect no active parathoracic or paralumbar muscle spasm, sacroiliac joints were not tender to palpation, heel/toe standing was unimpaired, and the Trendelenburg test was negative on both sides. Sensory testing in both lower extremities was normal. Dr. Sultan opined that the motion restrictions of appellant’s neck and low back were secondary to her nonwork-related underlying degenerative changes involving her neck and lower back. He noted that her subjective complaints did not correspond to the objective findings found on examination. Dr. Sultan opined that appellant’s cervical and lumbar sprains had completely resolved and indicated that she could return to her date-of-injury job as a secretary.

⁴ *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).

⁵ *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).

⁶ *See R.P.*, Docket No. 17-1133 (issued January 18, 2018).

The Board has reviewed the opinion of Dr. Sultan and finds that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Sultan provided a thorough factual and medical history and accurately summarized the relevant medical evidence.⁷ The Board thus finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of his, OWCP referral physician, establishing that appellant no longer had residuals or disability due to her November 4, 1993 employment injury as of February 11, 2022.

In support of her claim, appellant submitted a June 29, 2021 narrative report, wherein Dr. Nambiar opined that appellant was unable to work due to persistent neck and back pain, which caused discomfort and spasm. Dr. Nambiar advised that appellant's condition was employment related. Similarly, in a June 30, 2021 narrative report, Dr. Haimovic indicated that appellant injured her low back and neck due to a work injury in 1993 and had experienced severe, persistent pain ever since. In a December 2, 2021 report, Dr. Bruce S. Stein, a Board-certified rheumatologist, also opined that her neck and back conditions were employment related. The Board, however, has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale.⁸

In a June 29 and 30, 2021 OWCP-5c forms, Drs. Nambiar and Haimovic indicated that appellant required work restrictions. However, they did not provide an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.⁹

Appellant also submitted several diagnostic studies. However, diagnostic studies, standing alone, lack probative value on causal relationship as they do not address whether employment factors caused the diagnosed condition/disability.¹⁰

OWCP also received November 22 and December 6, 2021 and February 5, 2022 reports, wherein Dr. DeRiggi, a chiropractor, diagnosed segmental and somatic dysfunction of the spine, cervical and lumbar radiculopathies, myofascial pain with jump sign, and pain in thoracic spine. However, these reports do not constitute probative medical evidence as there is no indication that Dr. DeRiggi treated spinal subluxations as demonstrated to exist by x-rays. Chiropractors are physicians under FECA only to the extent that their reimbursable expenses are limited to treatment consisting of the manual manipulation of the spine to correct a subluxation as demonstrated to exist by x-rays.¹¹

⁷ See *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *Melvina Jackson*, 38 ECAB 443 (1987).

⁸ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

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

¹⁰ *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

¹¹ 5 U.S.C. § 8101(2). See also 20 C.F.R. § 10.311; *S.R.*, Docket No. 22-0421 (issued July 15, 2022).

In view of the foregoing, the Board finds that OWCP met its burden of proof.

LEGAL PRECEDENT -- ISSUE 2

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing disability or residuals on or after that date, causally related to the accepted employment injury.¹² 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.¹³

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing disability or residuals on or after February 11, 2022, causally related to her accepted November 4, 1993 employment injury.

Appellant submitted a January 31, 2022 report in which Dr. Haimovic opined that her permanent and progressive symptoms were employment related. She also submitted a May 4, 2022 report in which Dr. Obedian opined that her cervical and lumbar conditions, including disc herniations at C5-6 and L2-3 and spinal stenosis, were employment related. As noted above, the Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.¹⁴ This evidence is, therefore, insufficient to meet appellant's burden of proof.

In a September 2, 2022 report, Dr. Haimovic diagnosed persistent pain in both upper extremities, consistent with bilateral C7 radiculopathy, and bilateral L4 radiculopathy, and on January 17, 2022 he diagnosed bilateral L5-S1 radiculopathy and myofascial pain with jump sign. The Board, however, has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁵ Therefore, this evidence is also insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish continuing disability or residuals on or after February 11, 2022 causally related to the accepted November 4, 1993 employment injury, the Board finds that appellant has not met her burden of proof.

¹² 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).

¹³ *Id.*

¹⁴ *Supra* note 11.

¹⁵ *Supra* note 12.

Appellant may submit new evidence or argument with a written request for reconsideration 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 OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 11, 2022, as she no longer had disability or residuals causally related to her accepted November 4, 1993 employment injury. The Board further finds that appellant has not met her burden of proof to establish continuing disability or residuals on or after February 11, 2022, causally related to her accepted November 4, 1993 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 31, 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