

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

D.T., Appellant	)	
	)	
and	)	Docket No. 23-0538
	)	Issued: October 24, 2023
DEPARTMENT OF THE INTERIOR, FISH &	)	
WILDLIFE SERVICE, KLAMATH BASIN	)	
NATIONAL WILDLIFE REFUGE COMPLEX,	)	
Tulelake, CA, Employer	)	
	)	

*Appearances:*  
Thomas S. Harkins, Esq., for the appellant<sup>1</sup>  
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 March 11, 2023 appellant, through counsel, filed a timely appeal from a November 30, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the 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.

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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 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.

<sup>2</sup> 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 March 3, 2022, as he no longer had disability or residuals causally related to his accepted May 6, 2004 employment injury; and (2) whether appellant has met his burden of proof to establish continuing disability or residuals on or after March 3, 2022 causally related to his accepted May 6, 2004 employment injury.

## **FACTUAL HISTORY**

On May 25, 2004 appellant, then a 58-year-old engineering equipment operator, filed an occupational disease claim (Form CA-2) alleging that he experienced lower back, right hip, and leg pain, and difficulty walking, due to factors of his federal employment including lifting building materials while performing manual labor and carpentry work. He noted that he first became aware of his conditions in February 2004 and realized their relationship to his federal employment on May 19, 2004. Appellant stopped work on May 7, 2004. OWCP accepted the claim for sprain of lumbosacral joint/ligament; sprain of back, lumbar region; closed dislocation lumbar vertebra; closed dislocation sacrum; tear of medial cartilage or meniscus of knee, bilateral; effusion of joint, lower leg, bilateral; loose body in knee, bilateral; and other tear of cartilage or meniscus of knee, bilateral. It paid appellant wage-loss compensation on the supplemental rolls effective November 1, 2004, and on the periodic rolls effective December 26, 2004.

On October 21, 2004 appellant underwent OWCP-authorized arthroscopic partial medial and lateral meniscectomies and removal of large loose body of the right knee. On March 21, 2005 he underwent OWCP-authorized arthroscopic partial medial meniscectomy of the left knee.

In an August 11, 2020 medical report, Dr. David I. Dryland, an attending rheumatologist, noted the history of injury and appellant's medical treatment. He indicated that appellant had pain and stiffness on examination, which was expected with inflammatory arthritis, iritis, and HLA-B27, and that was due to osteoarthritis damage. Dr. Dryland opined that appellant was able to perform minimal activity at best.

On October 22, 2021 OWCP referred appellant along with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. Richard E. James, a Board-certified internist, for a second opinion evaluation to determine the status of his accepted employment-related conditions and work capacity, need for medical treatment, and whether the acceptance of his claim should be expanded to include rheumatologic disorder, ankylosing spondylitis, spondyloarthropathy, and HLA-B27 positive.

In a December 3, 2021 report, Dr. James noted his review of the SOAF and appellant's history of injury and medical treatment, and provided his examination findings. He opined that appellant's May 2004 low back injury accelerated and increased the progression of the underlying developmental rheumatoid spondylitis. Dr. James indicated that appellant's rheumatoid spondylitis was unrelated to his employment injury but, noted that every activity and lifting of lumber performed by appellant accelerated his underlying inflammatory rheumatoid disease and temporarily caused some progression. However, he deferred to Dr. Dryland or a rheumatologist to determine the amount of aggravation to appellant's back and knee problems. Dr. James further

opined that appellant's meniscal tears of both knees, for which he had surgery, were degenerative in nature and related to his rheumatoid disease and long-term use of heavy equipment that aggravated the underlying rheumatological conditions. However, according to the SOAF, he noted that the bilateral meniscal tears were related to the accepted employment injury. Dr. James opined that appellant's accepted bilateral knee and lumbar spine conditions had resolved with no residuals. He explained that appellant had undergone meniscectomies and his other symptoms were associated with his underlying arthritis. Dr. James explained that the degenerative arthritis was present at the time of injury and the changes seen would take many months to years to develop, rather than immediate from an acute injury two months before they were recognized on the magnetic resonance imaging (MRI) scan. With regard to the accepted lumbar spine condition, he opined that the present problems were due to the underlying rheumatoid arthritis condition as degenerative spine conditions would have taken years to develop when they were first noted by MRI scan taken after the injury. Dr. James further opined that the conditions of rheumatologic disorder, ankylosing spondylitis, spondyloarthropathy, and HLA-B27 positive were causally related to the work injury only to the extent that their clinical onset was accelerated by the work injury. He explained that according to the rheumatologist, the work injury would activate a rheumatoid spondylitis and cause it to become symptomatic sooner. Dr. James opined that, over a period of years, the work injury itself should not have caused the continued progression of the disease. He, thus, concluded that the work injury temporarily accelerated the onset of the rheumatoid spondylitis but, it did not precipitate or aggravate the underlying condition, which was unrelated to and not causally related to the work injury. Dr. James further opined that there were no other new work-related conditions as appellant's current conditions and complaints were caused by his underlying rheumatoid spondylitis. Additionally, he opined that appellant was totally disabled from work secondary to his underlying multiple joint rheumatoid spondylitis disease and that such disability was solely related to his inflammatory arthritis and not to any condition related to his employment injury. Dr. James concluded that the work injury would not prevent appellant from returning to his regular position.

In a January 21, 2022 notice, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits based on Dr. James' opinion that he no longer had disability or residuals causally related to his accepted May 6, 2004 employment injury. It afforded him 30 days to submit evidence or argument challenging the proposed termination action.

In a February 16, 2022 response, appellant, through counsel, presented arguments contending that the proposed termination of benefits was contrary to the medical evidence of record and FECA. No additional medical evidence was submitted.

By decision dated March 3, 2022, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical evidence rested with Dr. James' opinion that appellant no longer had disability or residuals causally related to his accepted May 6, 2004 employment injury.

On November 21, 2022 appellant, through counsel, requested reconsideration.

Appellant submitted an August 14, 2014 report by Dr. Dryland. Dr. Dryland indicated that appellant suffered from significant spondyloarthropathy with inflammatory arthritis and iritis associated with positive HLA-B27, which caused significant pain that was partially controlled with

medication. He reported that appellant related a back injury sustained at work in 2004 which never healed and experienced pain and swelling in other joints in 2005. Dr. Dryland indicated that he presented in his office in March 2006 and was diagnosed with ankylosing synovitis, positive HLA-B27, and associated iritis. He indicated that ankylosing spondylitis, along with all spondyloarthropathies, were linked to initiation or worsening by trauma. Dr. Dryland opined that appellant's back injury likely sped up his onset and/or worsened his unaccepted conditions. He also opined that appellant was permanently disabled given the severity of his conditions.

By decision dated November 30, 2022, OWCP denied modification of its March 3, 2022 decision.

### **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.<sup>3</sup> 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. Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.

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

### **ANALYSIS**

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits, effective March 3, 2022.

OWCP accepted the claim for sprain of lumbosacral joint/ligament; sprain of back, lumbar region; closed dislocation lumbar vertebra; closed dislocation of medial cartilage or meniscus of knee, bilateral; effusion of joint, lower leg, bilateral; loose body in knee, bilateral; other tear of cartilage or meniscus of knee, bilateral and authorized meniscectomies of the knees. It based the termination of appellant's compensation benefits for his accepted back and knee conditions on the second opinion report of Dr. James. However, Dr. James did not explain with rationale when each of appellant's accepted conditions ceased.<sup>4</sup> Furthermore, OWCP undertook development of the medical record to determine whether the acceptance of appellant's claim should be expanded to include additional conditions. Dr. James opined that the work injury temporarily accelerated the onset of the rheumatoid spondylitis. As the issue of expansion remained unresolved, the Board

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<sup>3</sup> See *P.T.*, Docket No. 21-0328 (issued May 2, 2022); *T.C.*, Docket No. 20-1163 (issued July 13, 2021); *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>4</sup> *K.W.*, Docket No. 19-1224 (issued November 15, 2019); see *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits, effective March 3, 2022.

As the medical evidence of record is insufficient to establish that appellant no longer had disability or residuals due to the accepted employment injury, the Board finds that OWCP failed to meet its burden of proof.<sup>5</sup>

**CONCLUSION**

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 3, 2022.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 30, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 24, 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

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<sup>5</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.