

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

S.T., Appellant	)	
	)	
and	)	Docket No. 23-0610
	)	Issued: April 8, 2024
U.S. POSTAL SERVICE, NORTH TEXAS	)	
PROCESSING & DISTRIBUTION CENTER,	)	
Coppell, TX, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On March 21, 2023 appellant filed a timely appeal from October 27, 2022 and March 16, 2023 merit decisions of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> 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 to consider the merits of this case.

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<sup>1</sup> The Board notes that, following the issuance of the March 16, 2023 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.*

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 27, 2022, as she no longer had disability or residuals causally related to the accepted June 4, 2020 employment injury.

## FACTUAL HISTORY

On June 24, 2020 appellant, then a 41-year-old city carrier assistant 2, filed a traumatic injury claim (Form CA-1) alleging that on June 4, 2020 she sustained contusions of both knees and sprained her left foot and right shoulder when she fell down the stairs while in the performance of duty. She stopped work on June 6, 2020. OWCP accepted the claim for sprain of the right shoulder joint, tear of the medial meniscus of both knees, sprain of the medial collateral ligament of both knees, sprain of both knees, and sprain of ligament of the left ankle. It paid appellant wage-loss compensation on the supplemental rolls, effective July 27, 2020, and on the periodic rolls, effective September 13, 2020. OWCP subsequently expanded the acceptance of the claim to include impingement syndrome of the right shoulder and injury of muscle/tendon of the rotator cuff of the right shoulder.

In June 9 and July 5, 2022 reports, Dr. Ravi Patel, a Board-certified internist, reviewed appellant's history of injury and diagnosed sprain of the right shoulder, tear of the medial meniscus of both knees, sprain of the medial collateral ligament of both knees, sprain of both knees, and sprain of the left ankle. He reviewed magnetic resonance imaging (MRI) scan results, which demonstrated medial meniscus tear of both knees, right shoulder impingement, and grade I-II tibiotalar ligament, and grade I tibionavicular ligament of the left ankle. Dr. Patel indicated that appellant's work-related conditions had not resolved based on clinical subjective pain and objective functional limitation to both knees, the right shoulder, and the right ankle. He noted that surgical intervention was recommended for the right knee and left ankle. Dr. Patel indicated that appellant was unable to return to work due to her work-related conditions and recommended continued rehabilitation.

On July 6, 2022 OWCP referred appellant, along with the medical record, a June 29, 2022 statement of accepted facts (SOAF), and a series of questions, to Dr. George M. Cole, an osteopath specializing in orthopedic surgery, for a second opinion regarding the necessity of surgical intervention to the right knee and left ankle, and to evaluate her continued employment-related disability and residuals. The June 29, 2022 SOAF provided to Dr. Cole related that appellant's claim for a June 4, 2020 traumatic injury was accepted for right shoulder sprain, medial meniscus tear of both knees, sprain of the medial collateral ligament of both knees, sprain of both knees, and sprain of ligament of the left ankle.

Appellant continued to submit medical evidence, including July 8 and August 5, 2022 attending physician's reports (Form CA-20) from Dr. Patel, finding disability from July 8 through September 5, 2022. She also submitted a July 18, 2022 functional capacity evaluation (FCE) performed by Dr. Voranart K. Sunakapakdee, a chiropractor, finding that she could only work below-sedentary or sedentary/light-duty work and indicating that she could not return to her preinjury working environment.

In an August 8, 2022 report, Dr. Cole related that appellant was injured while working on June 4, 2020<sup>3</sup> when she fell down the stairs and landed on both knees and hands and twisted her left ankle. He reviewed the medical record and objective testing and presented examination findings. Dr. Cole indicated that physical examination of both knees was near normal in all respects. He noted that MRI scans demonstrated mild degenerative conditions in both knees and mild sprains of the left ankle. Dr. Cole opined that the subjective complaints of moderate pain in both knees and left ankle did not correspond to objective clinical findings. He further indicated that appellant's acute work-related injuries, including a contusion/sprain of the knees and sprain of the left ankle, had resolved long ago and there were no evidence-based recommended treatments that were likely to improve her condition. Dr. Cole added that appellant's current complaints were related to chronic degenerative conditions that were not caused or aggravated by the employment injury. He stated that there was no indication for surgery on either the right knee or the left ankle in relation to the employment injury as the clinical findings were near normal. Dr. Cole further opined that appellant was capable of returning to her date-of-injury job and that the July 18, 2022 FCE was "not credible based on the physical examination today." He completed a work capacity evaluation (Form OWCP-5c) dated August 22, 2022, in which he indicated that appellant had reached maximum medical improvement (MMI) and could perform medium-duty work.

In a September 6, 2022 Form CA-20, Dr. Patel extended appellant's period of disability through October 6, 2022.

On September 16, 2022 OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Cole's opinion that the June 4, 2020 accepted conditions had ceased without disability or residuals. It afforded her 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

Appellant continued to submit medical evidence, including an October 17, 2022 narrative report from Dr. Neil J. Atlin, an osteopath specializing in pain management, discussing appellant's neuropathic knee pain.

By decision dated October 27, 2022, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical evidence rested with Dr. Cole's second opinion.

Appellant subsequently submitted additional medical evidence, including a November 2, 2022 narrative report from Dr. Atlin reporting physical examination findings, and a November 18, 2022 Form CA-20 from Dr. Patel finding disability through December 18, 2022.

On November 29, 2022 appellant requested reconsideration. In support of her request, she submitted a November 21, 2022 report from Dr. Robert J. Spicer, a Board-certified physiatrist, who indicated that appellant was totally disabled until at least January 20, 2023. Dr. Spicer reviewed Dr. Cole's report and opined that it was contradictory and inadequate. He diagnosed sprain of the right shoulder joint, tear of the medial meniscus of both knees, sprain of the medial collateral ligament of both knees, sprain of both knees, sprain of ligament of the left ankle, impingement syndrome of the right shoulder, and injury of muscle/tendon of the rotator cuff of the

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<sup>3</sup> Dr. Cole inadvertently listed the date of injury as June 24, 2020, rather than June 4, 2020.

right shoulder. Dr. Spicer advised that, though permanent residuals were probable, he expected continued improvement with ongoing physical therapy. He completed a December 20, 2022 Form CA-20 indicating that appellant could return to full-duty work on May 1, 2023.

On February 21, 2023 OWCP requested a supplemental report from Dr. Cole as it had inadvertently omitted the accepted conditions of impingement syndrome of right shoulder and injury of muscle/tendon of the rotator cuff of right shoulder from the June 29, 2022 SOAF. It also requested that he review and address Dr. Spicer's November 21, 2022 report. OWCP provided Dr. Cole with an updated SOAF including all of appellant's accepted conditions.

In a February 28, 2023 supplemental report, Dr. Cole indicated that there were no indications for a right knee meniscectomy, noting that appellant's subjective complaints did not correlate with objective clinical findings. He opined that her accepted bilateral knee medial meniscus tears were likely a chronic and preexisting condition and that any acute contusion/sprain of the knees had resolved. Dr. Cole further opined that appellant accepted bilateral knee sprains, right shoulder sprain, injury of muscle/tendon of the rotator cuff of the right shoulder, and the impingement syndrome of the right shoulder had all resolved. He stated his belief that her work-related injuries had resolved and required no further treatment. Dr. Cole reviewed Dr. Spicer's report and disagreed with his conclusions. He advised that appellant could return to her date-of-injury job.

By *de novo* decision dated March 16, 2023, OWCP again terminated appellant's wage-loss compensation and medical benefits, effective October 27, 2022.

### **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>4</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.<sup>5</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>7</sup> 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.<sup>8</sup>

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<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>7</sup> *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

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

## ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 27, 2022, as she no longer had disability or residuals causally related to the accepted June 4, 2020 employment injury.

In an August 8, 2022 report, Dr. Cole, OWCP's referral physician, maintained that appellant's subjective complaints of moderate pain in both knees and left ankle did not correspond to objective clinical findings. He opined that her work-related injuries, including a contusion/sprain of the knees and sprain of the left ankle, had resolved long ago. Dr. Cole added that appellant's current complaints were related to chronic degenerative conditions that were not caused or aggravated by the employment injury. He stated that there was no indication for surgery on either the right knee or the left ankle in relation to the employment injury as the clinical findings were near normal. Dr. Cole further opined that appellant was capable of returning to her date-of-injury job.

On February 21, 2023 OWCP requested a supplemental report from Dr. Cole as it had inadvertently omitted the accepted conditions of impingement syndrome of right shoulder and injury of muscle/tendon of the rotator cuff of right shoulder from a June 29, 2022 SOAF. It provided him with an updated SOAF including all of appellant's accepted conditions. In a February 28, 2023 supplemental report, Dr. Cole maintained that there were no indications for a right knee meniscectomy, noting that her subjective complaints did not correlate with objective clinical findings. He opined that appellant's accepted bilateral knee medial meniscus tears were likely a chronic and preexisting condition, and that any acute contusion/sprain of the knees had resolved. Dr. Cole further found that her accepted sprains of both knees, right shoulder sprain, injury of muscle/tendon of the rotator cuff of the right shoulder, and impingement syndrome of the right shoulder had all resolved. He concluded that appellant's work-related injuries had resolved and required no further treatment. Dr. Cole advised that she could return to her date-of-injury job.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Cole, finding that appellant ceased to have disability or residuals as of October 27, 2022, causally related to her accepted June 4, 2020 employment injury. The Board has reviewed Dr. Cole's opinion and notes that it has reliability, probative value, and convincing quality with respect to continuing work-related disability and residuals. His opinion provided a thorough factual and medical history and accurately summarized the relevant medical evidence.<sup>9</sup>

Appellant submitted a November 21, 2022 narrative report from Dr. Spicer, an attending physician, who indicated that appellant was totally disabled until at least January 20, 2023. Dr. Spicer diagnosed sprain of the right shoulder joint, tear of medial meniscus of both knees, sprain of the medial collateral ligament of both knees, sprain of both knees, sprain of ligament of the left ankle, impingement syndrome of the right shoulder, and injury of muscle/tendon of the rotator cuff of the right shoulder. He advised that, though permanent residuals were probable, he expected continued improvement with ongoing physical therapy. Dr. Spicer completed a

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<sup>9</sup> See *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *Melvina Jackson*, 38 ECAB 443 (1987).

December 20, 2022 Form CA-20 indicating that appellant could return to full-duty work on May 1, 2023. Although he found work-related disability, his opinion is of limited probative value because he did not provide a rationalized medical explanation supporting causal relationship. 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/level of disability has an employment-related cause.<sup>10</sup>

In June 9 and July 5, 2022 reports, Dr. Patel, another attending physician, opined that appellant's work-related conditions had not resolved based on clinical subjective pain and objective functional limitation to both knees, the right shoulder, and the right ankle. He indicated that appellant was unable to return to work due to her work-related conditions. However, these reports also are of limited probative value regarding work-related disability/residuals because Dr. Patel failed to provide adequate medical rationale in support of his opinion on causal relationship. In July 8 and August 5, 2022 Form CA-20 reports, he found disability from July 8 through September 5, 2022. In a September 6, 2022 Form CA-20, Dr. Patel extended appellant's period of disability through October 6, 2022. In a November 18, 2022 Form CA-20, he found disability through December 18, 2022. However, Dr. Patel provided no opinion on the cause of the referenced disability, and the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's disability is of no probative value on the issue of causal relationship.<sup>11</sup>

Appellant also submitted a July 18, 2022 FCE performed by Dr. Sunakapakdee, a chiropractor, finding that appellant could not return to her preinjury working environment. However, Dr. Sunakapakdee does not qualify as a physician under FECA, and his report does not constitute probative medical evidence because he did not diagnose a subluxation as demonstrated to exist by x-rays.<sup>12</sup>

As the medical evidence is sufficient to establish that appellant no longer had disability or residuals due to the accepted employment injury, the Board finds that OWCP has met its burden of proof.

### CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 27, 2022.

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<sup>10</sup> See *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>11</sup> See *F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</sup> 5 U.S.C. § 8101(2). See also 20 C.F.R. § 10.311; *S.R.*, Docket No. 22-0421 (issued July 15, 2022).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 27, 2022 and March 16, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 8, 2024  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board